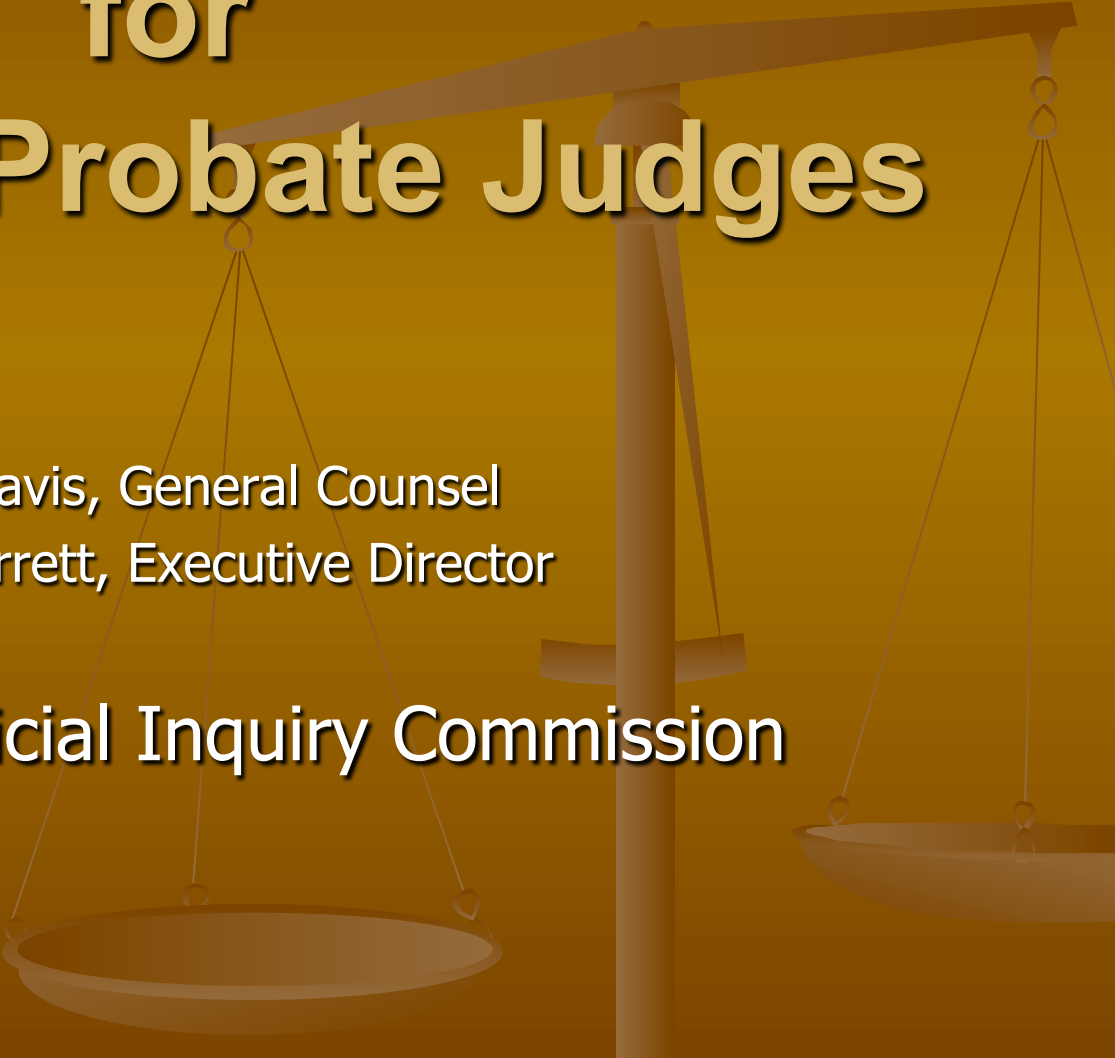


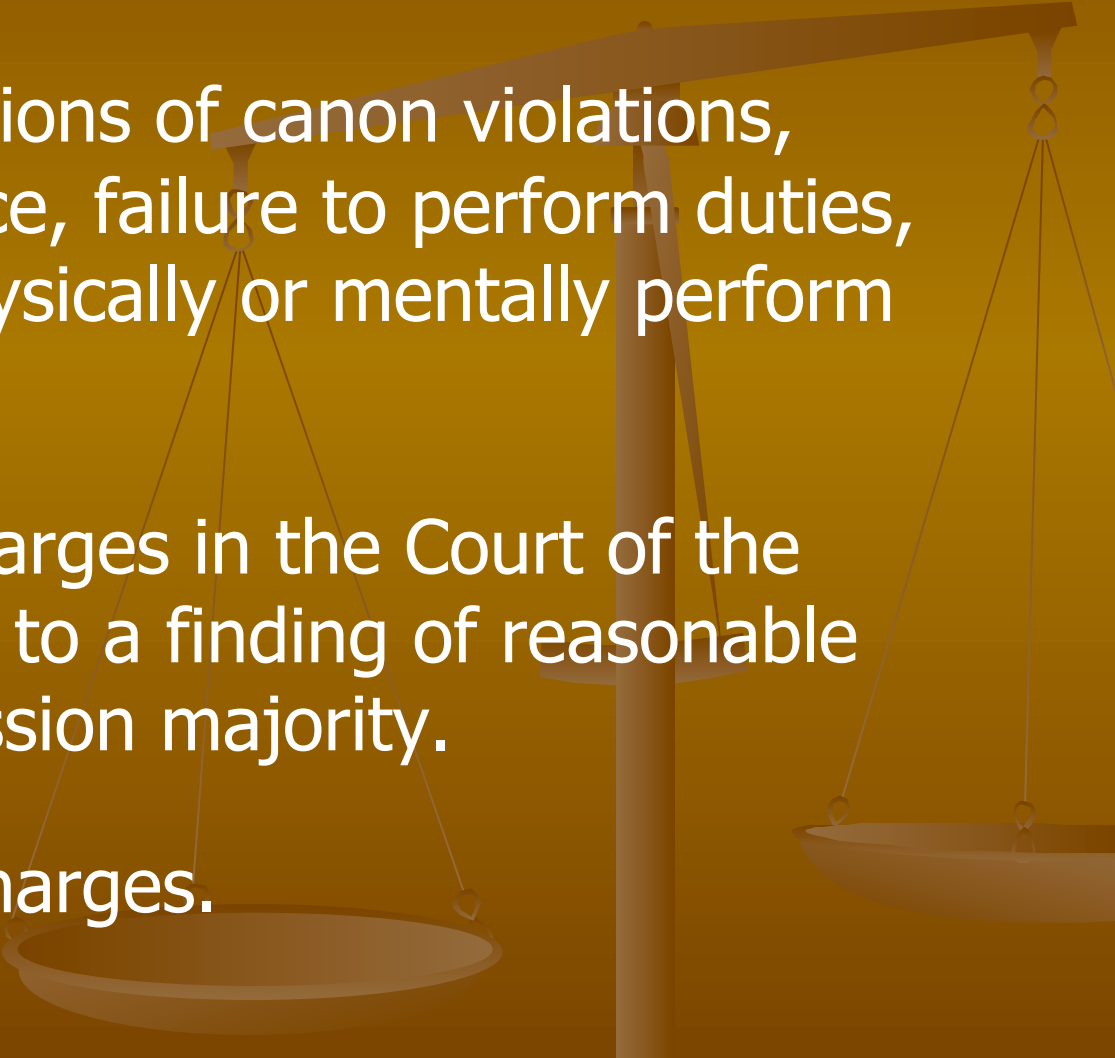
# Judicial Ethics for Alabama Probate Judges



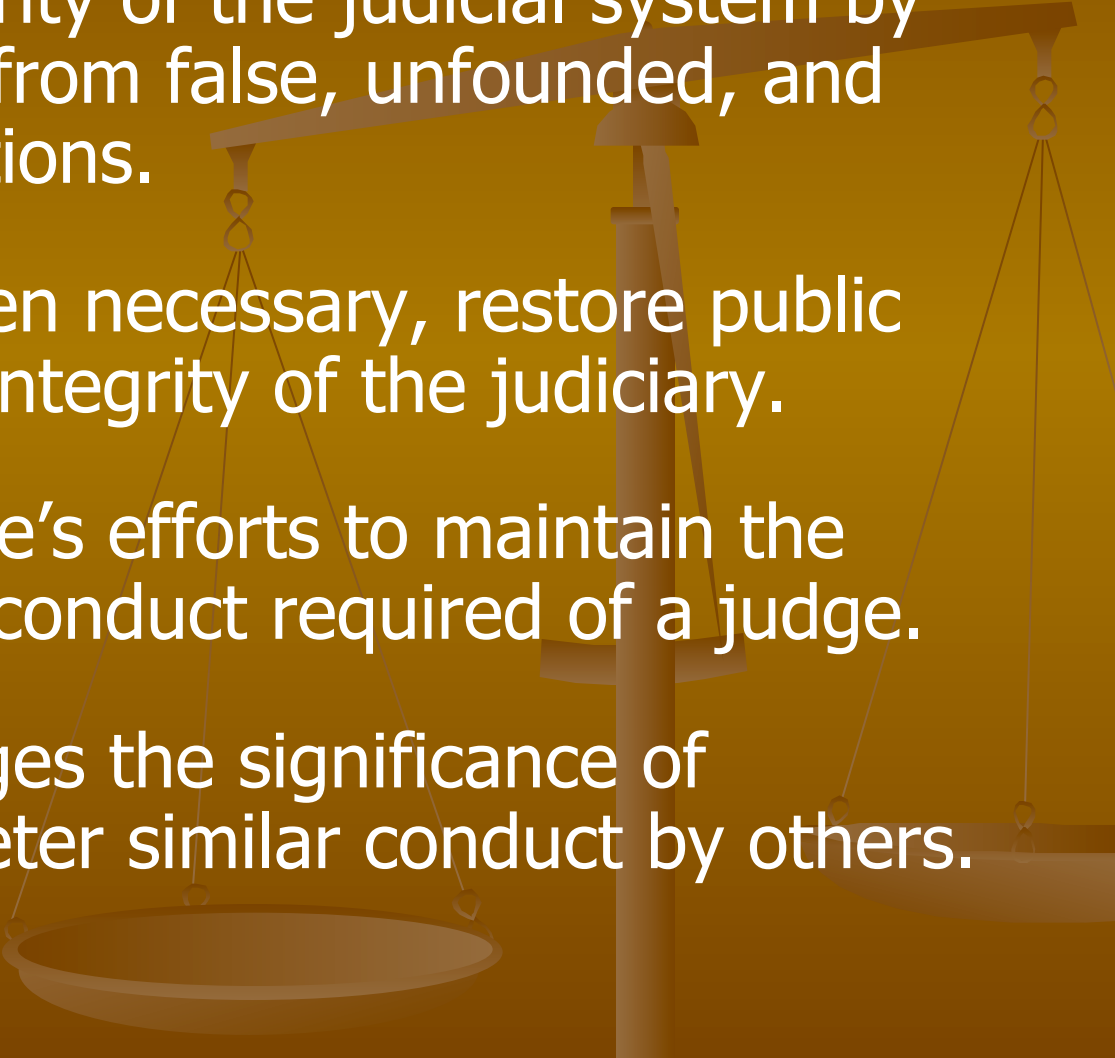
Rosa Davis, General Counsel  
Jenny Garrett, Executive Director

Alabama Judicial Inquiry Commission

# Ala. Constitution, Art. VI, § 156

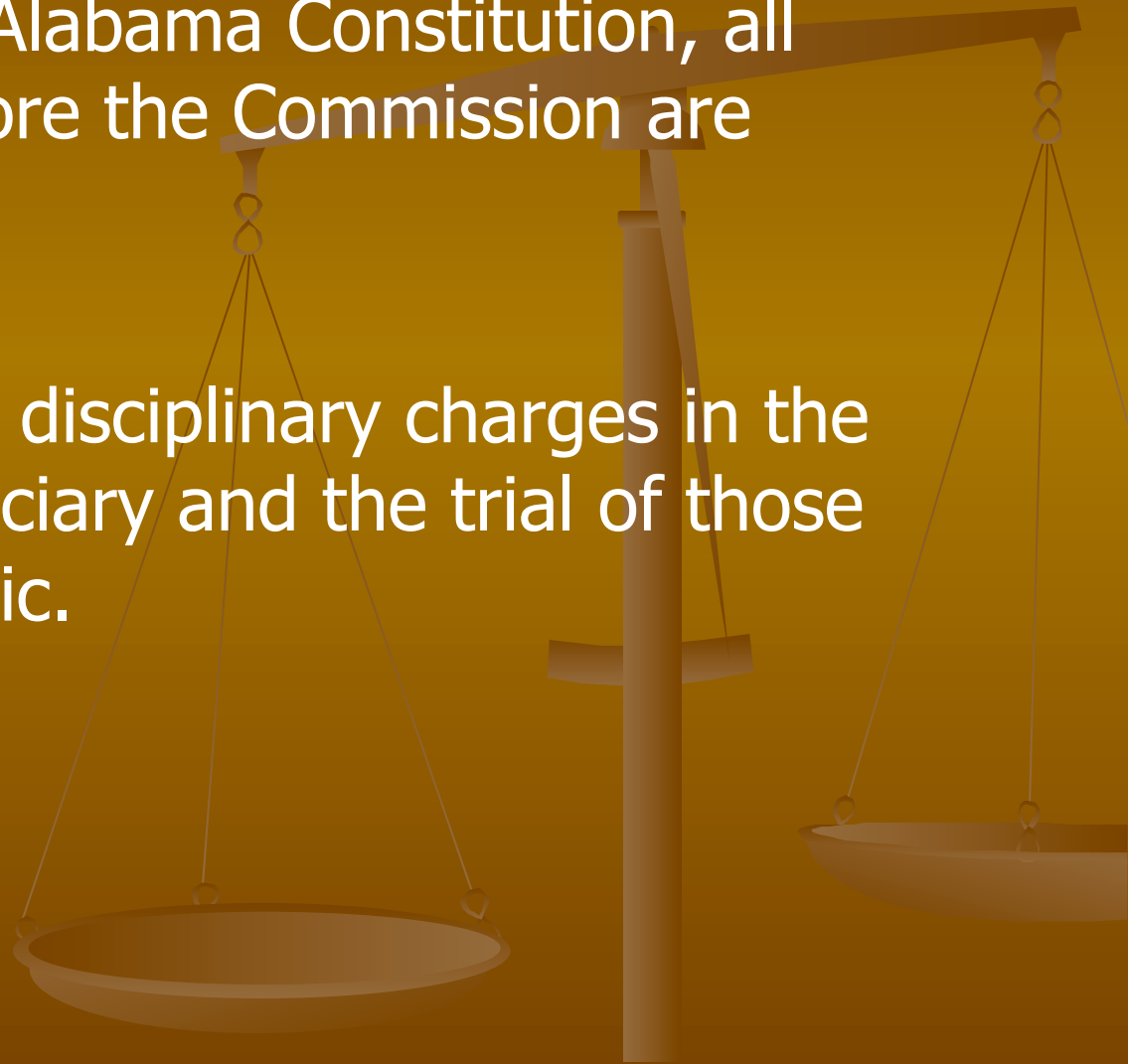
- Receive or initiate complaints.
  - Investigate allegations of canon violations, misconduct in office, failure to perform duties, and inability to physically or mentally perform duties.
  - File disciplinary charges in the Court of the Judiciary pursuant to a finding of reasonable basis by a Commission majority.
  - Prosecute those charges.
- 

# PURPOSES OF THE COMMISSION

- Preserve the integrity of the judicial system by protecting judges from false, unfounded, and inaccurate accusations.
  - Promote and, when necessary, restore public confidence in the integrity of the judiciary.
  - Support each judge's efforts to maintain the high standards of conduct required of a judge.
  - Impress upon judges the significance of misconduct and deter similar conduct by others.
- 

# CONFIDENTIALITY

- Pursuant to the Alabama Constitution, all proceedings before the Commission are confidential.
- Only the filing of disciplinary charges in the Court of the Judiciary and the trial of those charges are public.





# COMPLAINT PROCESS

## Rules of Procedure for JIC

- Verified complaint required.
- Commissioners review complaints week before each meeting.
- Commission votes at meeting to summarily dismiss or “investigate.”



# SUMMARY DISMISSAL



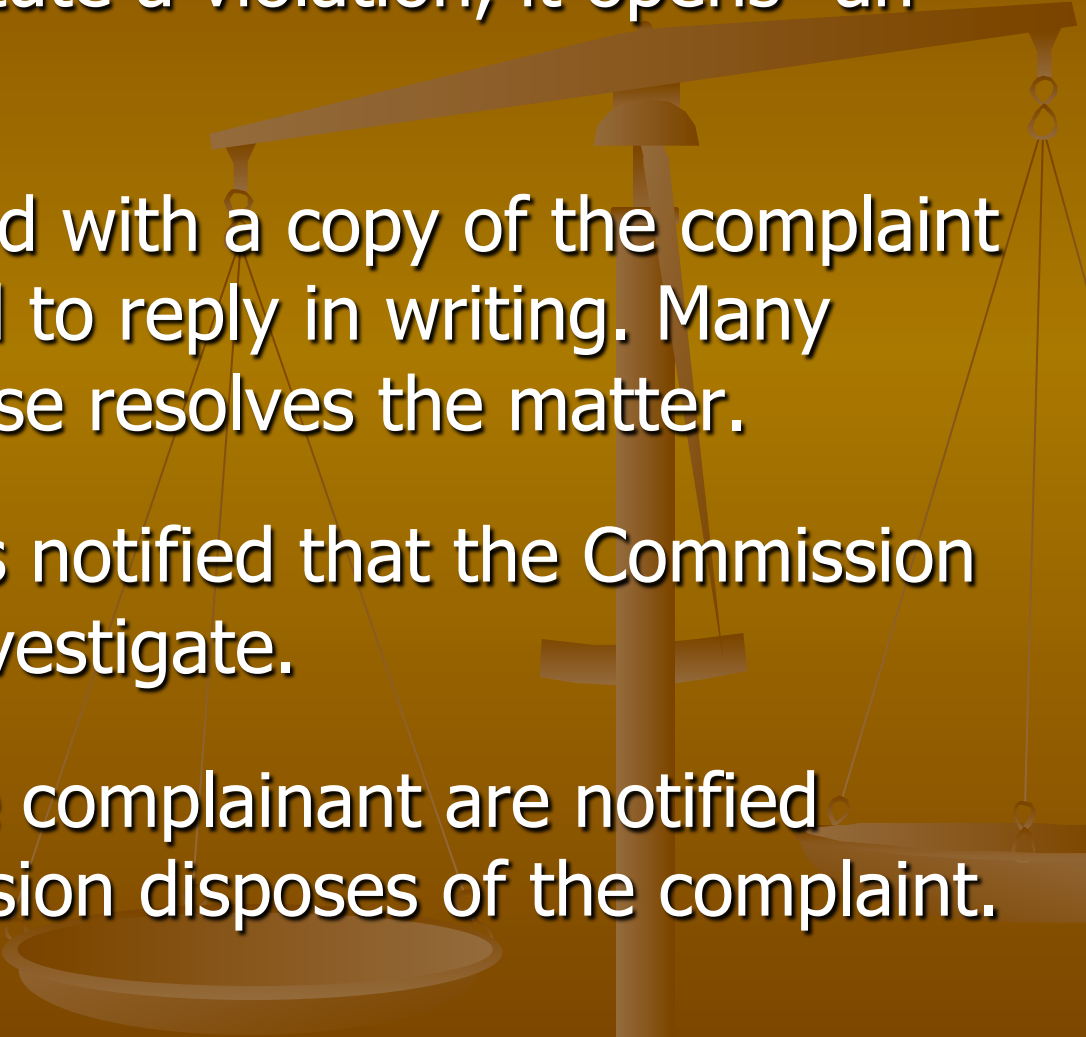
Allegation is summarily dismissed if

- it is outside the Commission's jurisdiction;
- it has no reasonable basis;
- it presents no ethical violation;
- it is a minor violation and/or isolated event; or
- the judge has taken corrective action.

Judge does not receive notice of complaint.

Complainant receives a letter stating finding of dismissal, without explanation.

# “INVESTIGATION”

- If the Commission finds that the allegation, if true, would constitute a violation, it opens “an investigation.”
  - The judge is served with a copy of the complaint and usually invited to reply in writing. Many times, that response resolves the matter.
  - If not, the judge is notified that the Commission is continuing to investigate.
  - The judge and the complainant are notified when the Commission disposes of the complaint.
- 

# FORMAL ADVISORY OPINIONS

(JIC Procedural Rule 18)

- A written request as to whether certain specified action proposed to be taken by the inquiring judge may constitute a violation.
- Issued only at the request of a judge and only with respect to his/her proposed conduct.
- In regard to motion to recuse, the Commission cannot advise how to rule, but may provide guiding principles.
- 945 advisory opinions to date. On Westlaw; Casemaker; Ala. State Bar.

# Most Frequent Allegations Necessitating a Request for Response

Demeanor

Bias

Refusal to Allow Party or Attorney to be Heard

Disqualification

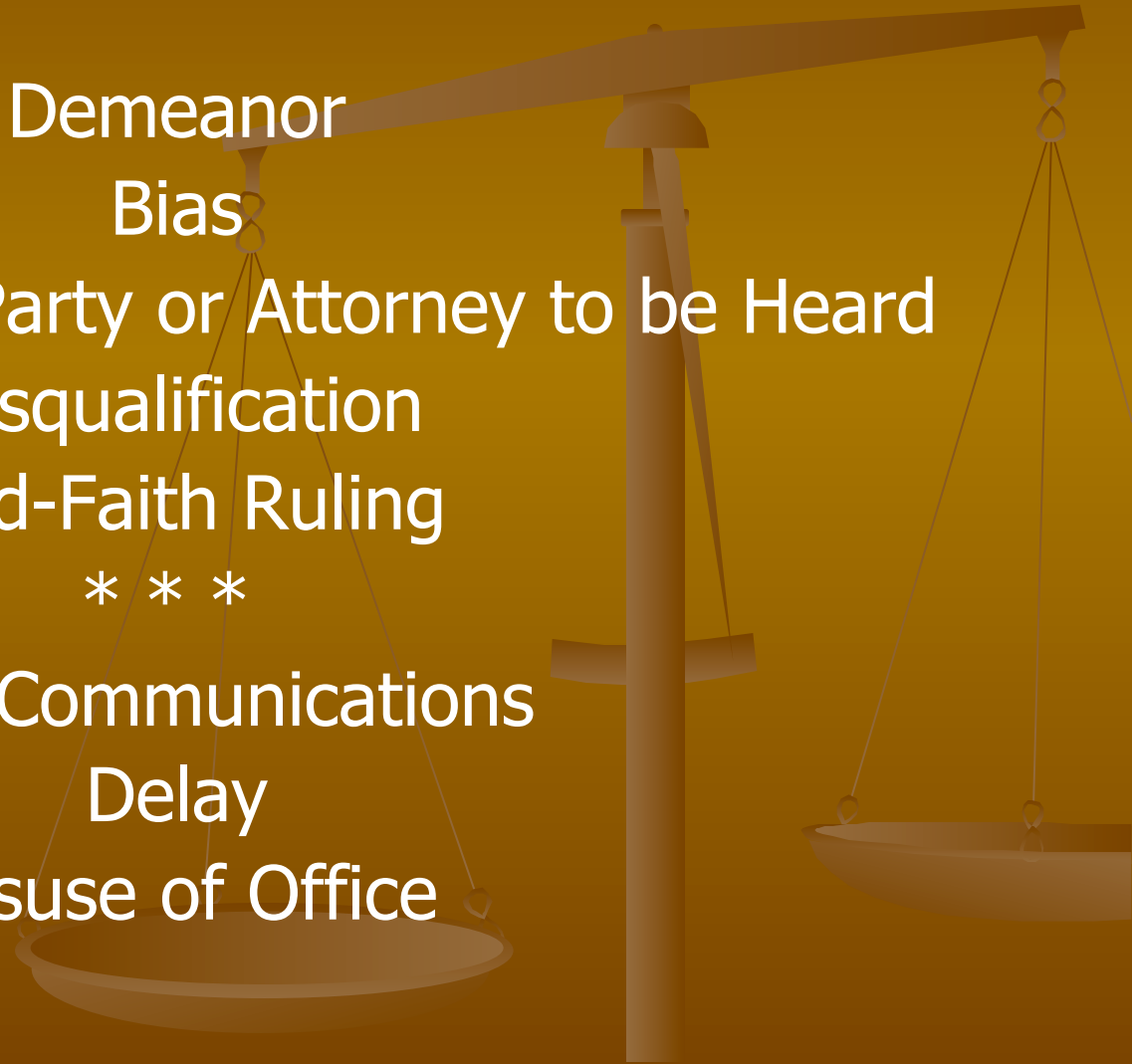
Bad-Faith Ruling

\* \* \*

Ex Parte Communications

Delay

Misuse of Office



# ON BEING A JUDGE

- Judges are not measured by the standards of ordinary men and women. Because of the awesome responsibilities of the office (and awesome corresponding power), the public expects them to be a cut above the ordinary.... For one to whom much is given much is expected.

--- *Hayes v. Ala. Court of Judiciary*,  
437 So. 2d 1276 (Ala. 1983)

# ALABAMA CANONS of JUDICIAL ETHICS



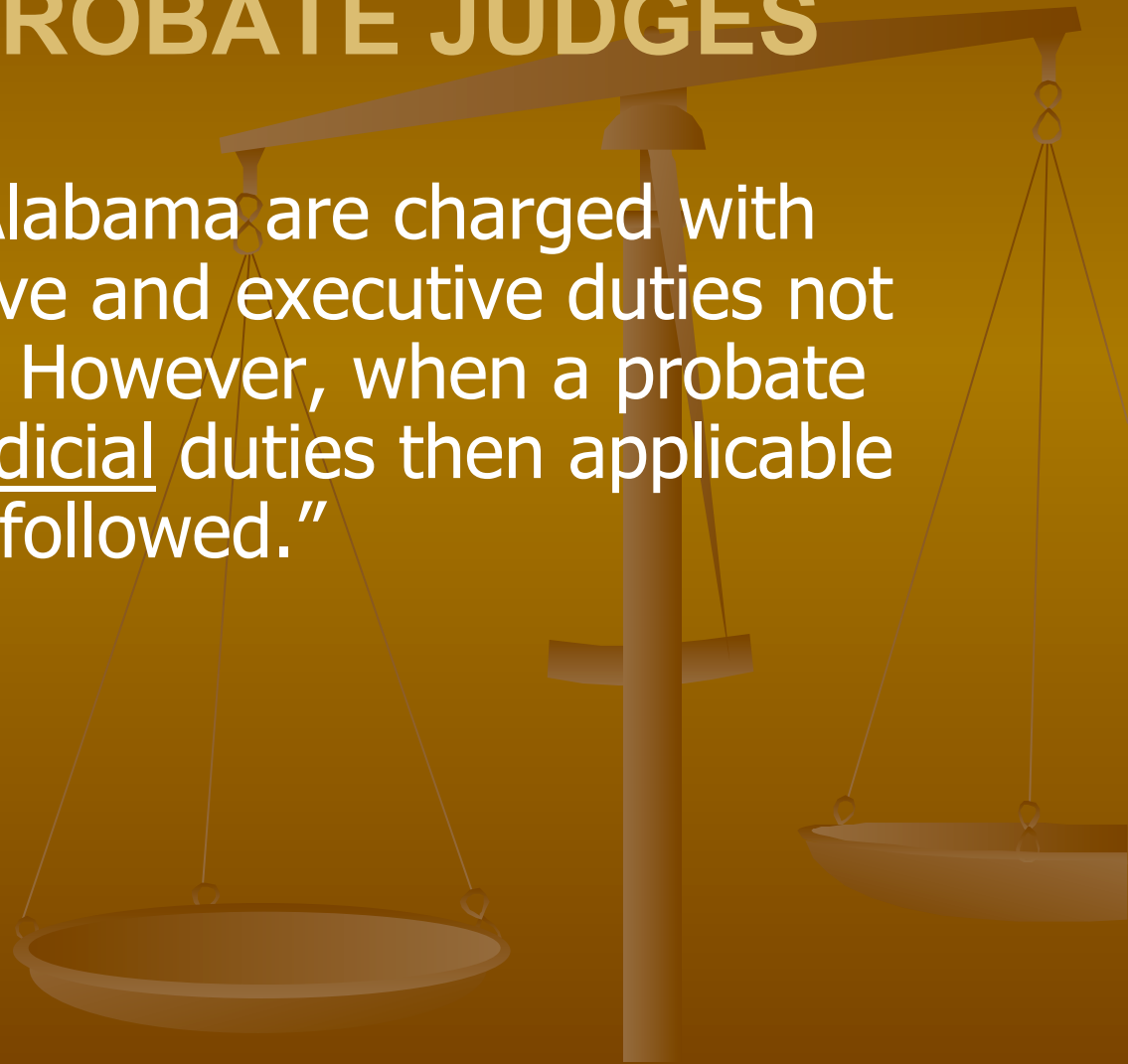
- The Canons are not guidelines. **They are the law.**
- “A code for judges and a declaration of that which the people of the State of Alabama have a right to expect of them”

--Alabama Supreme Court, Preamble to the Canons

# COMPLIANCE WITH THE CANONS

## PART C. PROBATE JUDGES

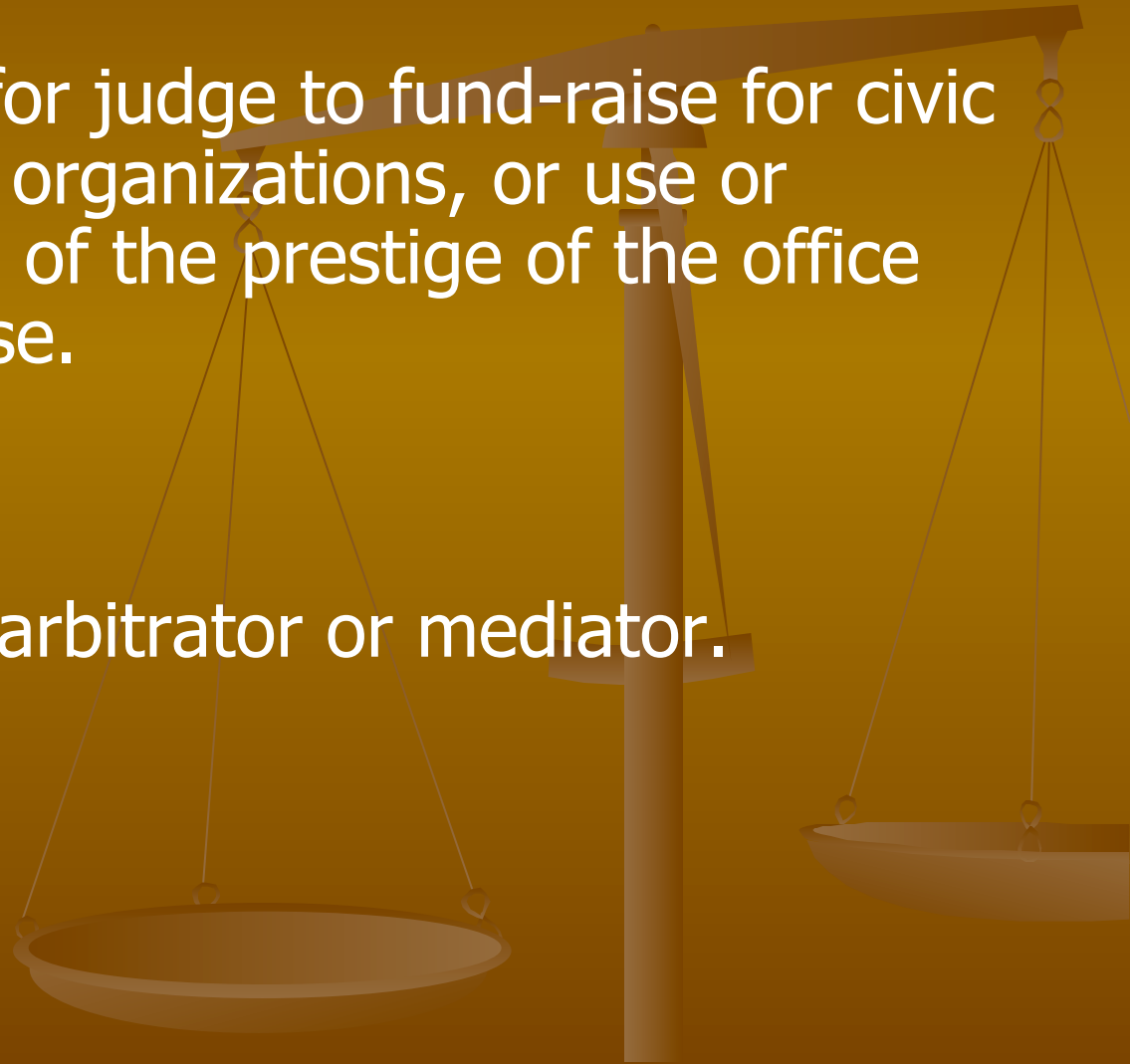
“Probate judges in Alabama are charged with many administrative and executive duties not judicial in nature. However, when a probate judge performs judicial duties then applicable canons should be followed.”





# EXCEPTIONS TO COMPLIANCE

- Canon 5B(2):  
Not desirable for judge to fund-raise for civic and charitable organizations, or use or permit the use of the prestige of the office for that purpose.
- Canon 5E:  
Cannot act as arbitrator or mediator.



# EXCEPTIONS TO COMPLIANCE

- Canon 5G:

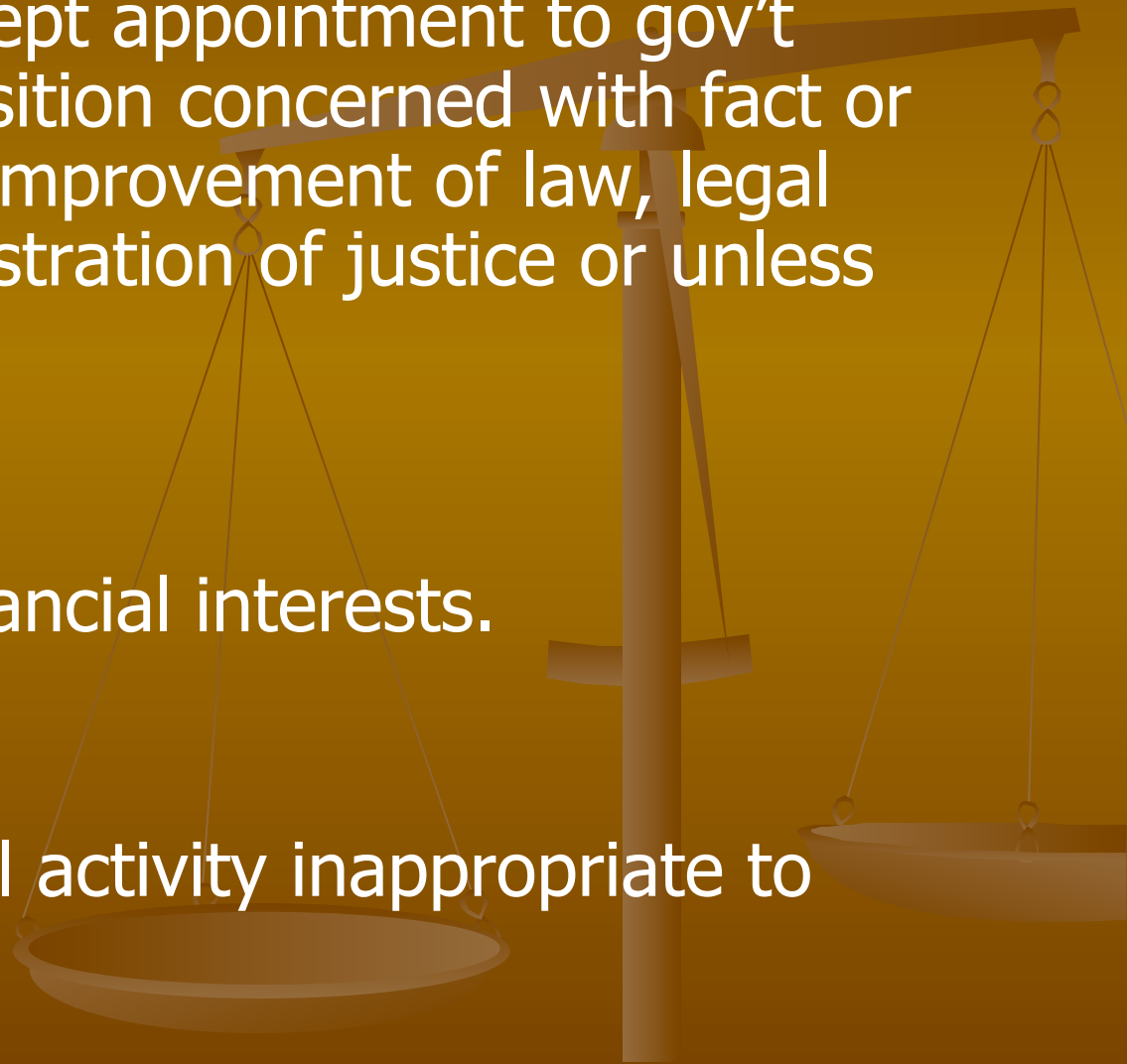
Not desirable to accept appointment to gov't commission or position concerned with fact or policy other than improvement of law, legal system, or administration of justice or unless required by law.

- Canon 6C:

File disclosure of financial interests.

- Canon 7:

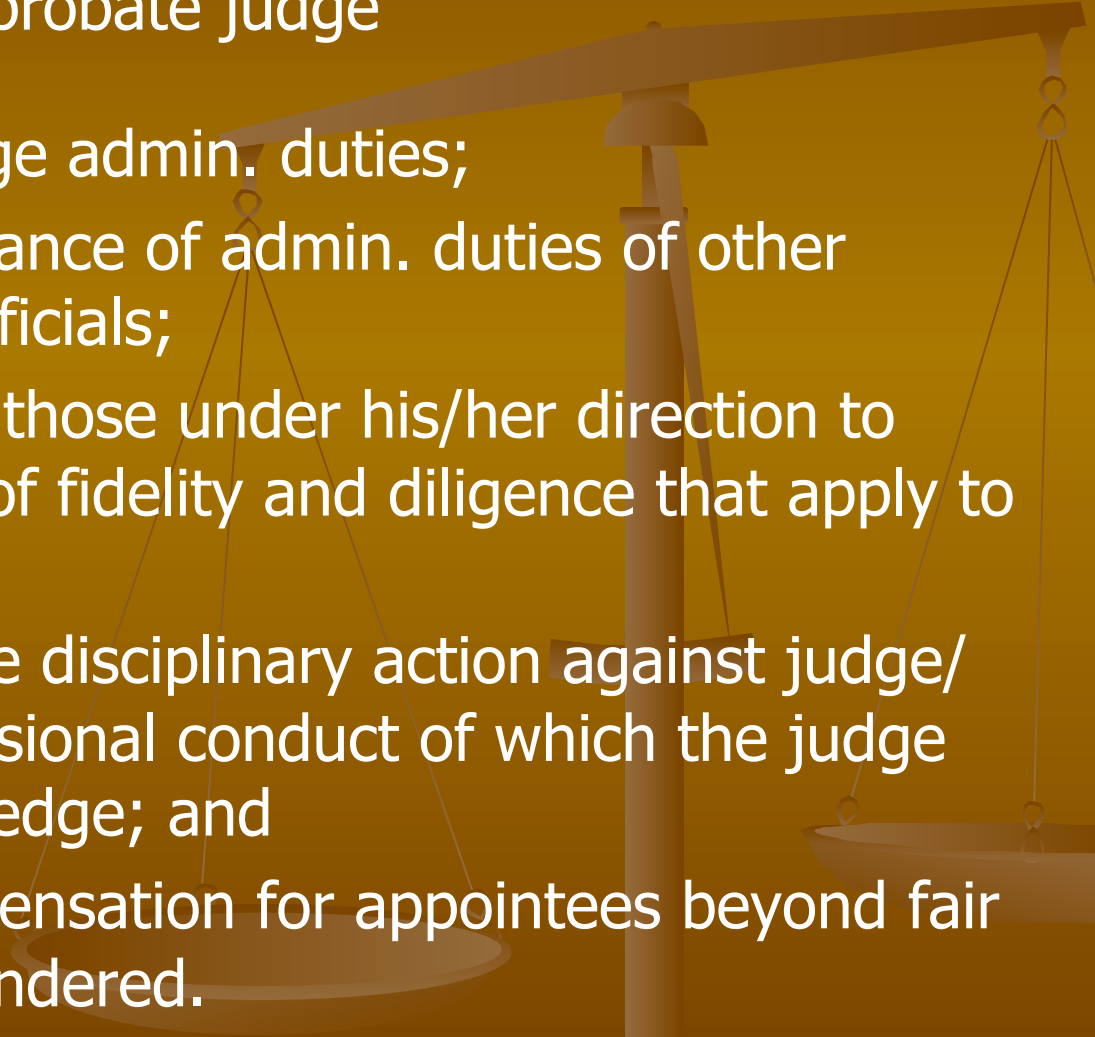
Refrain from political activity inappropriate to judicial office.



# COMPLIANCE: PROBATE JUDGES

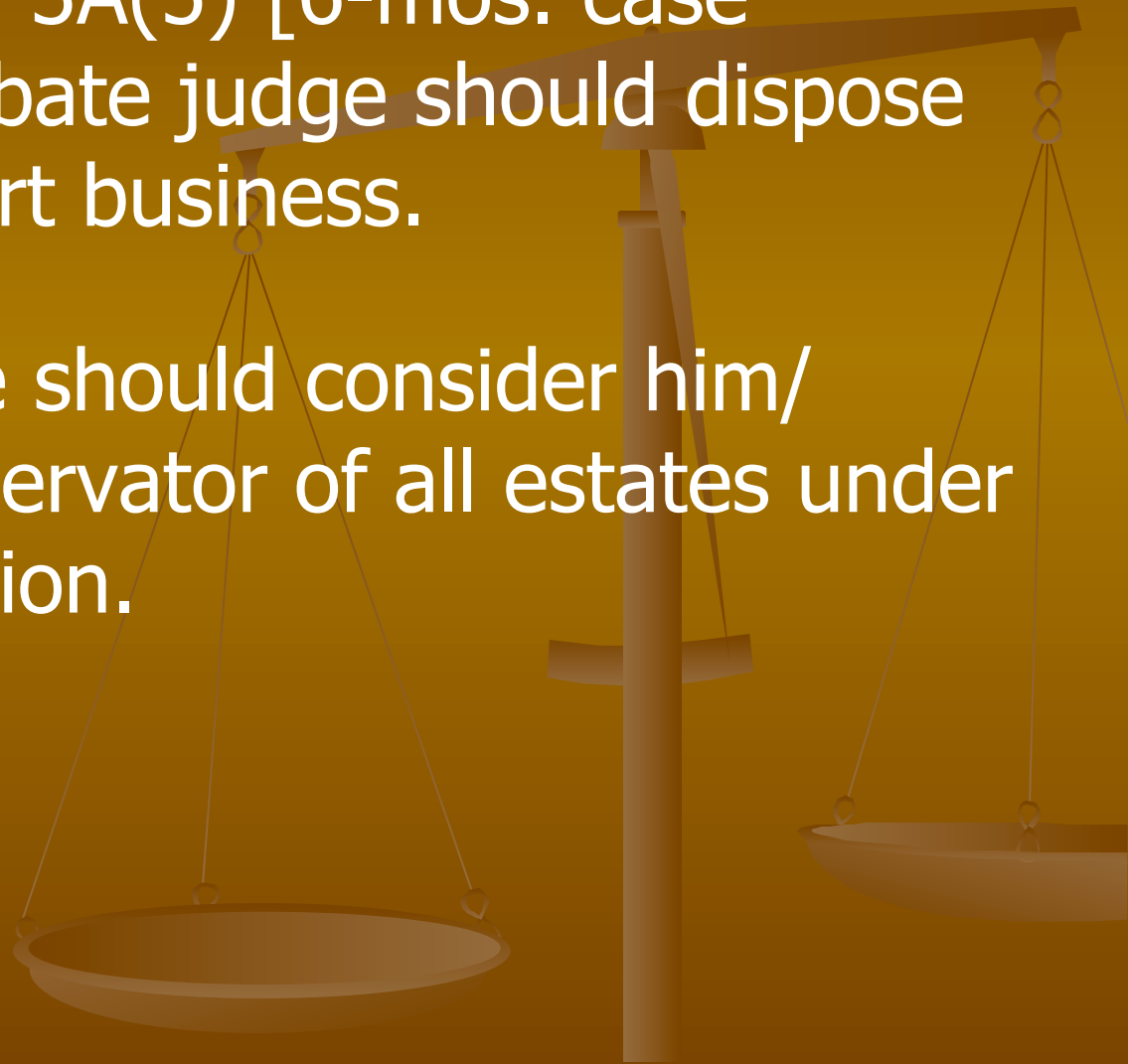
In lieu of Canon 3B [administrative duties]:

It is desirable that a probate judge

- ✓ Diligently discharge admin. duties;
  - ✓ Facilitate performance of admin. duties of other judges and court officials;
  - ✓ Require staff and those under his/her direction to observe standards of fidelity and diligence that apply to the judge;
  - ✓ Initiate appropriate disciplinary action against judge/lawyer for unprofessional conduct of which the judge has personal knowledge; and
  - ✓ Not approve compensation for appointees beyond fair value of services rendered.
- 

# COMPLIANCE: PROBATE JUDGES

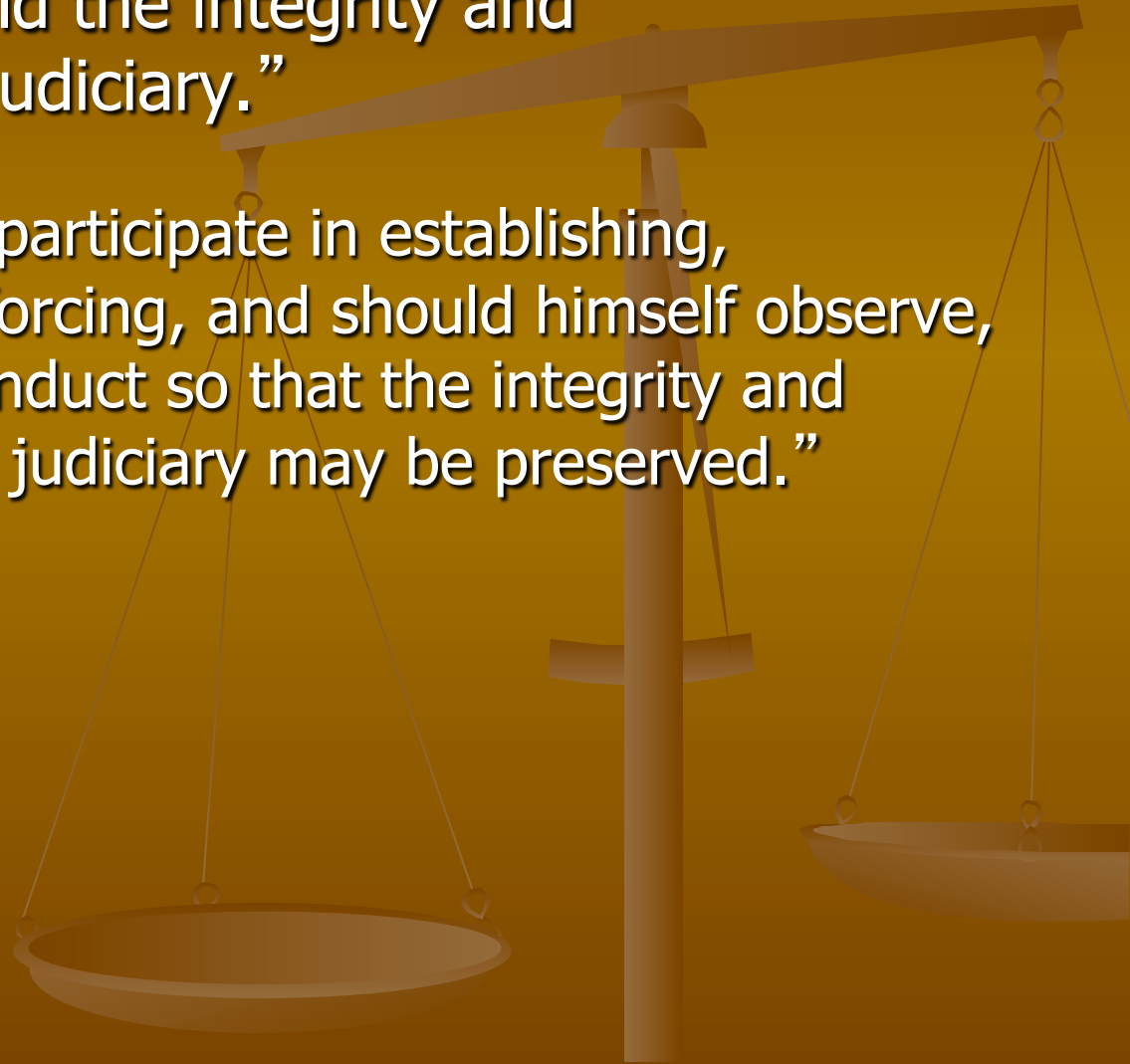
- In lieu of Canon 3A(5) [6-mos. case reports]: A probate judge should dispose promptly of court business.
- A probate judge should consider him/herself the conservator of all estates under his/her supervision.



# Canon 1

“A judge should uphold the integrity and independence of the judiciary.”

“A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.”



# Canon 1

## **Commentary**

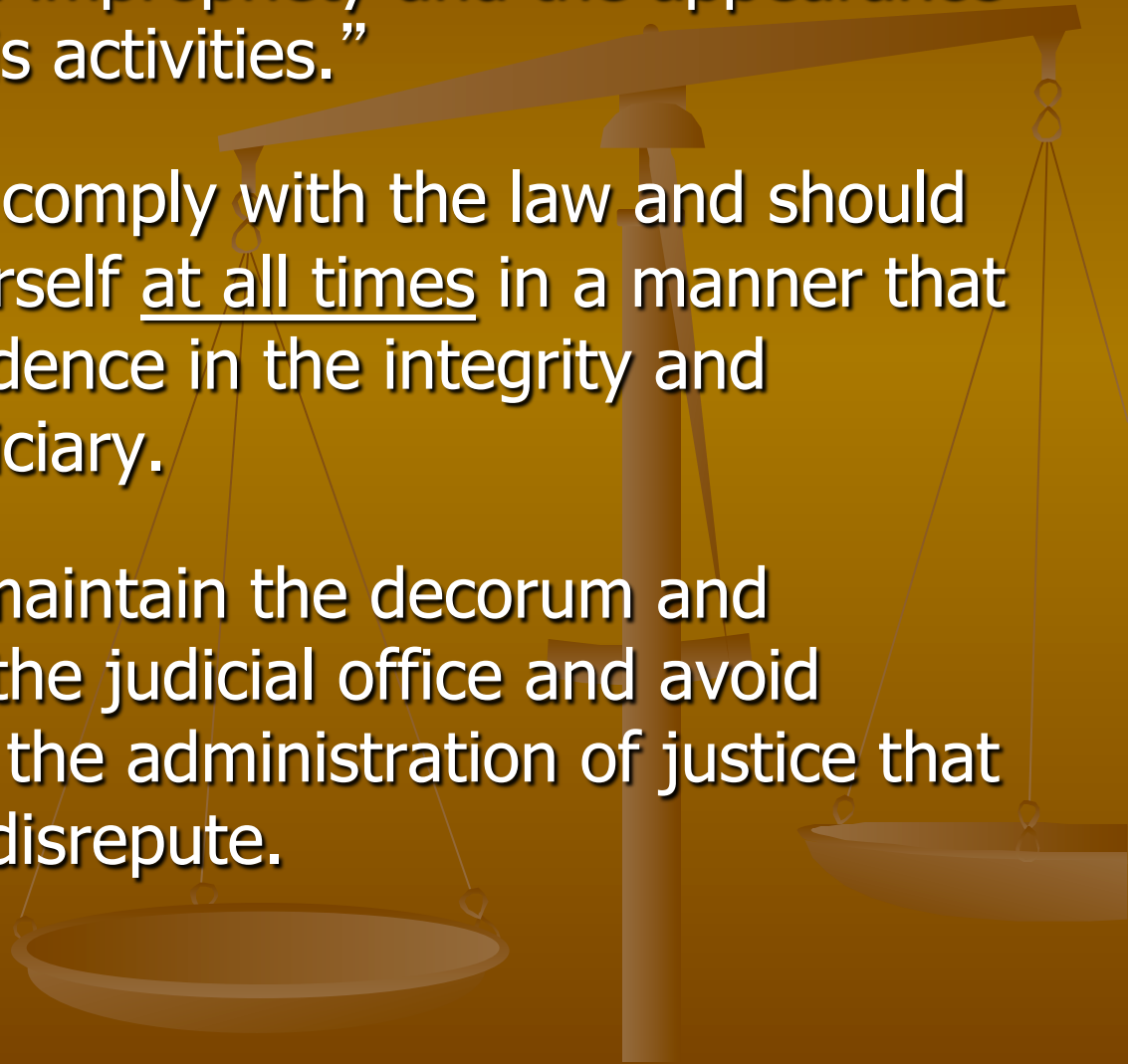
- *Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges.*
- *The **integrity and independence** of judges depend in turn upon their **acting without fear or favor**.*
- *A judiciary of **integrity** is one in which judges are **known for their probity, fairness, honesty, uprightness, and soundness of character**.*
- *An **independent** judiciary is one **free of inappropriate outside influences** when deciding cases.*
- *Although judges should be independent, they must **comply with the law**, including the provisions of these Canons.*
- *Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of the Canons diminishes public confidence in the judiciary and thereby does injury to the system of government under the law.*

# Canon 2

“A judge should avoid impropriety and the appearance of impropriety in all his activities.”

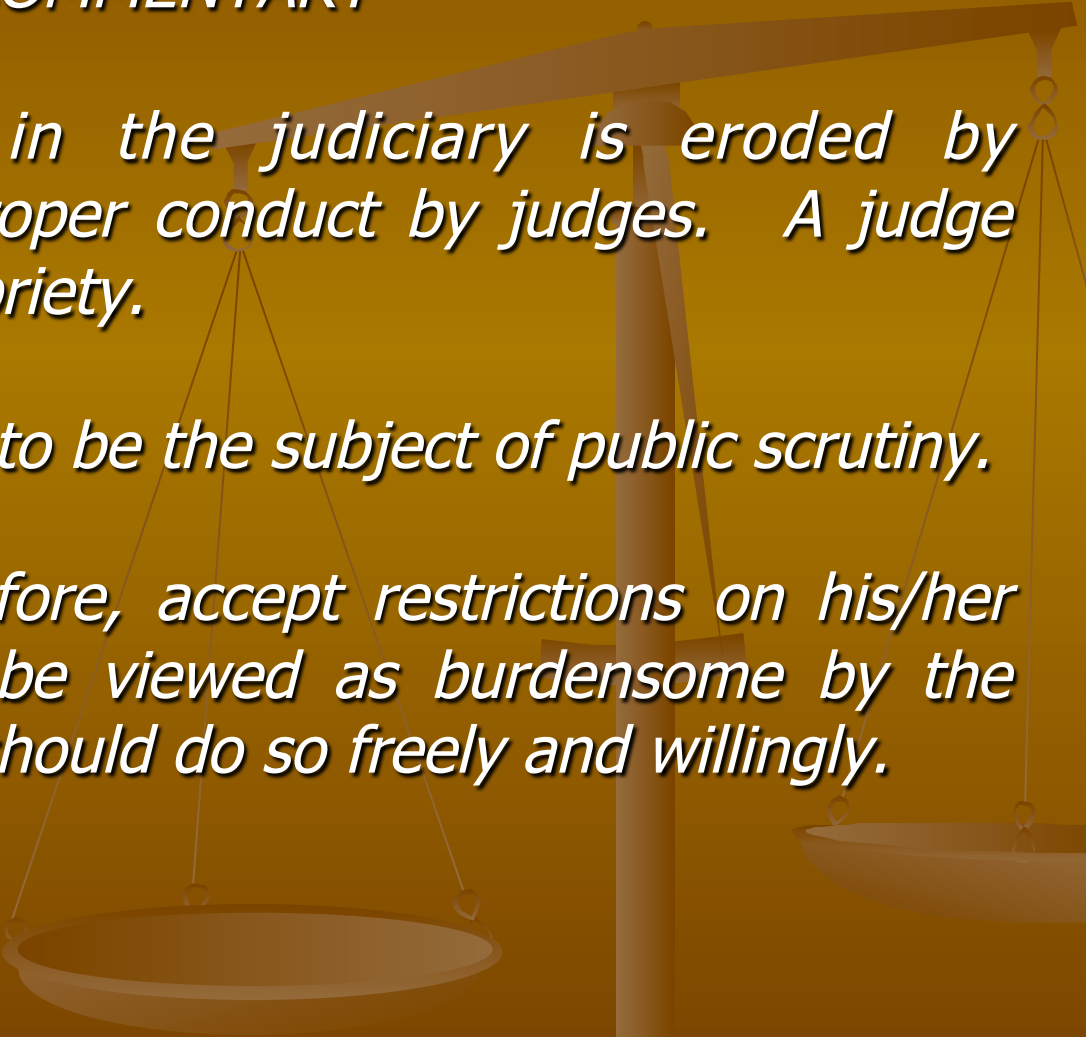
A. Respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. At all times maintain the decorum and temperance befitting the judicial office and avoid conduct prejudicial to the administration of justice that brings the office into disrepute.



# Canon 2

## COMMENTARY

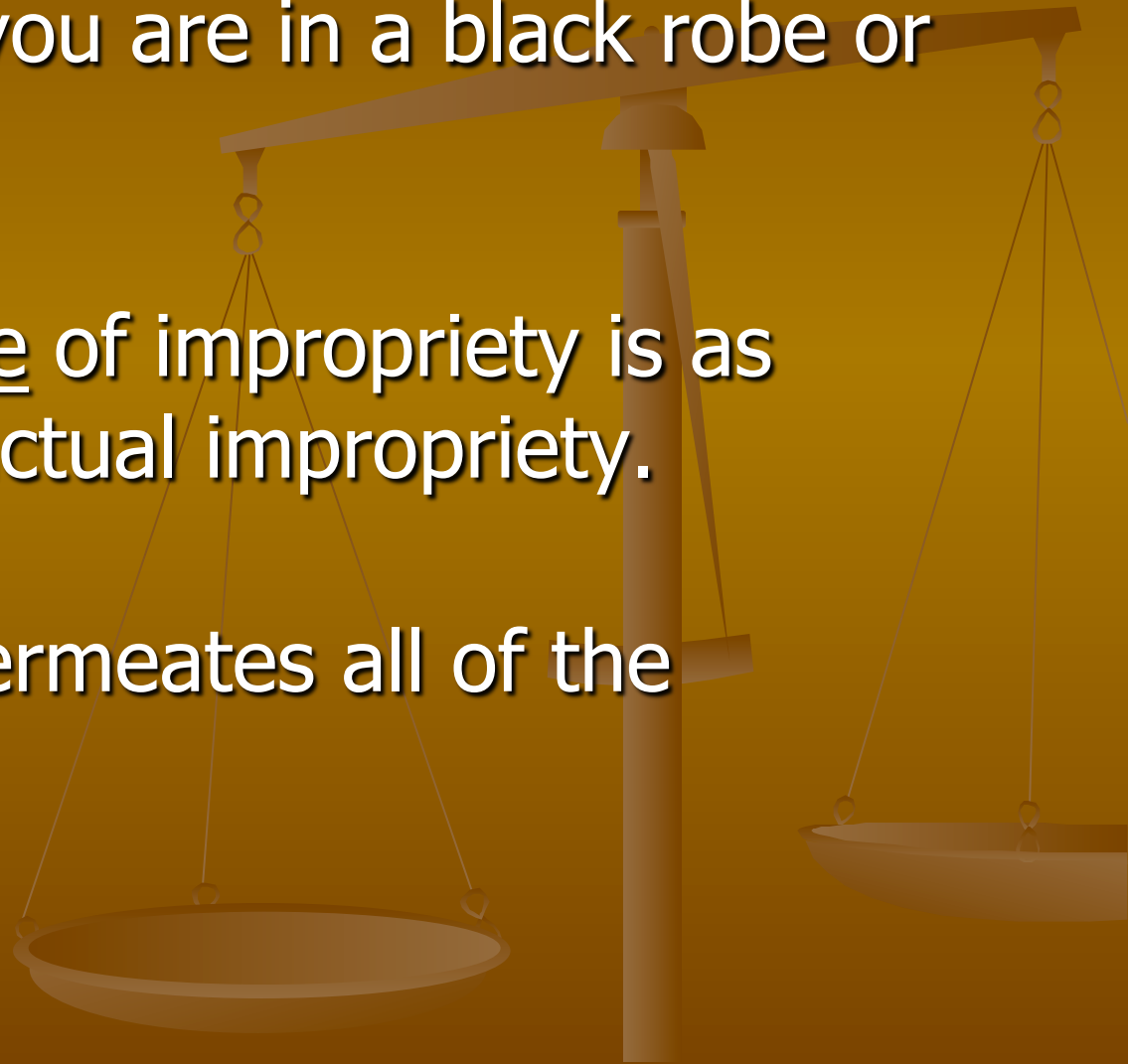
- 
- *Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety.*
  - *A judge must expect to be the subject of public scrutiny.*
  - *A judge must, therefore, accept restrictions on his/her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*



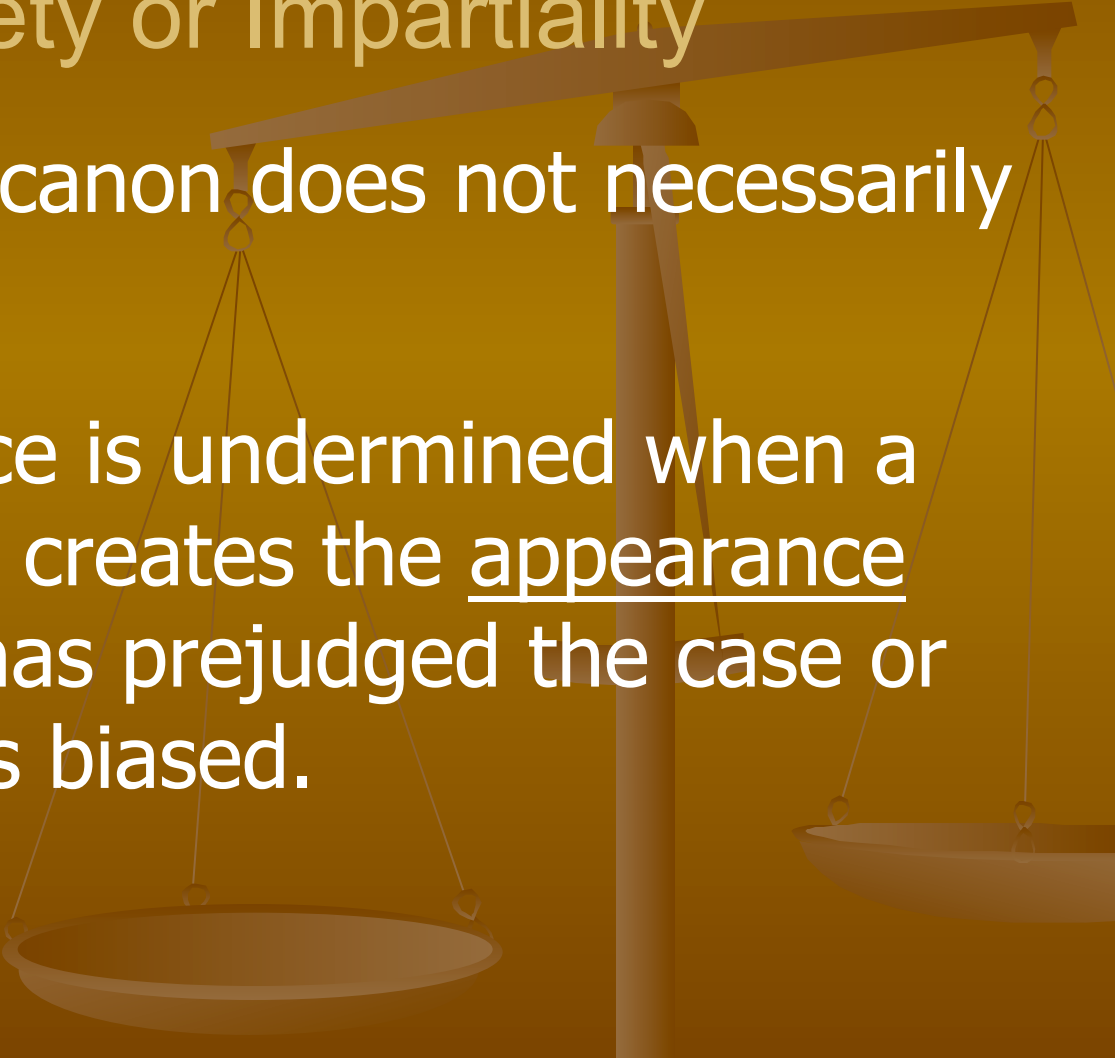
➤ This means in all your activities at all times, whether you are in a black robe or at the ball field.

➤ The appearance of impropriety is as problematic as actual impropriety.

■ This concept permeates all of the Canons



# Judge's Subjective Intent vs. Appearance of Impropriety or Impartiality



- A violation of a canon does not necessarily require intent.
- Public confidence is undermined when a judge's conduct creates the appearance that he or she has prejudged the case or that he or she is biased.

Even where a judge's action is not based on any improper motive and even where there is no reason to believe the judge would have acted without a full adherence to his/her oath –

“the courts of this State must avoid even the slightest appearance of impropriety. The impartiality of the courts and the citizens' confidence in that impartiality are the pillars that support our legal process.”

-- *Ex parte Jim Walter Homes, Inc.*,  
776 So. 2d 76, 80 (Ala. 2000)

# THE TEST FOR APPEARANCE OF IMPROPRIETY

What is the test for a judge to use in judging appearances?

“Whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.”

- Canon 2, ABA Model Code of Judicial Conduct

Alabama has articulated a specific test for “appearance of impropriety” only in the context of appearance of impartiality: Canon 3C(1)’s standard for disqualification.

# Compare

**DESERTION BY SOLDIER**



**DESERTION BY JUDGE**



# GIFTS: APPEARANCE OF IMPROPRIETY?

May a judge accept complimentary tickets to college football games or other events from attorneys who reside in counties outside the judge's jurisdiction but who represent litigants in the judge's court on occasion?

**Answer:** Not if the attorney then has a pending case before the judge; if the attorney does not have a pending case before the judge, the totality of the circumstances should be examined, including how frequently the attorney has cases before the judge, the monetary value involved, and whether the judge has been singled out as a recipient due to his/her judicial position.

-- Advisory Opinion 02-803

# SOCIAL INVITATIONS: APPEARANCE OF IMPROPRIETY?

There was no expectation of judicial favor or appearance of impropriety in a judge accepting an invitation from a bank to attend an annual outing to a dinner and college basketball game to which dozens of public officials, church and community leaders, and friends of the bank also were invited where the bank had no pending cases in the judge's court and was not a frequent litigator in the judge's court.

- Advisory Opinion 00-748

# CANON 2C

- A judge should not allow his/her family, social, political, or other relationships to influence his/her judicial conduct or judgment.
- A judge should not lend the prestige of the office to advance the private interests of others.\*

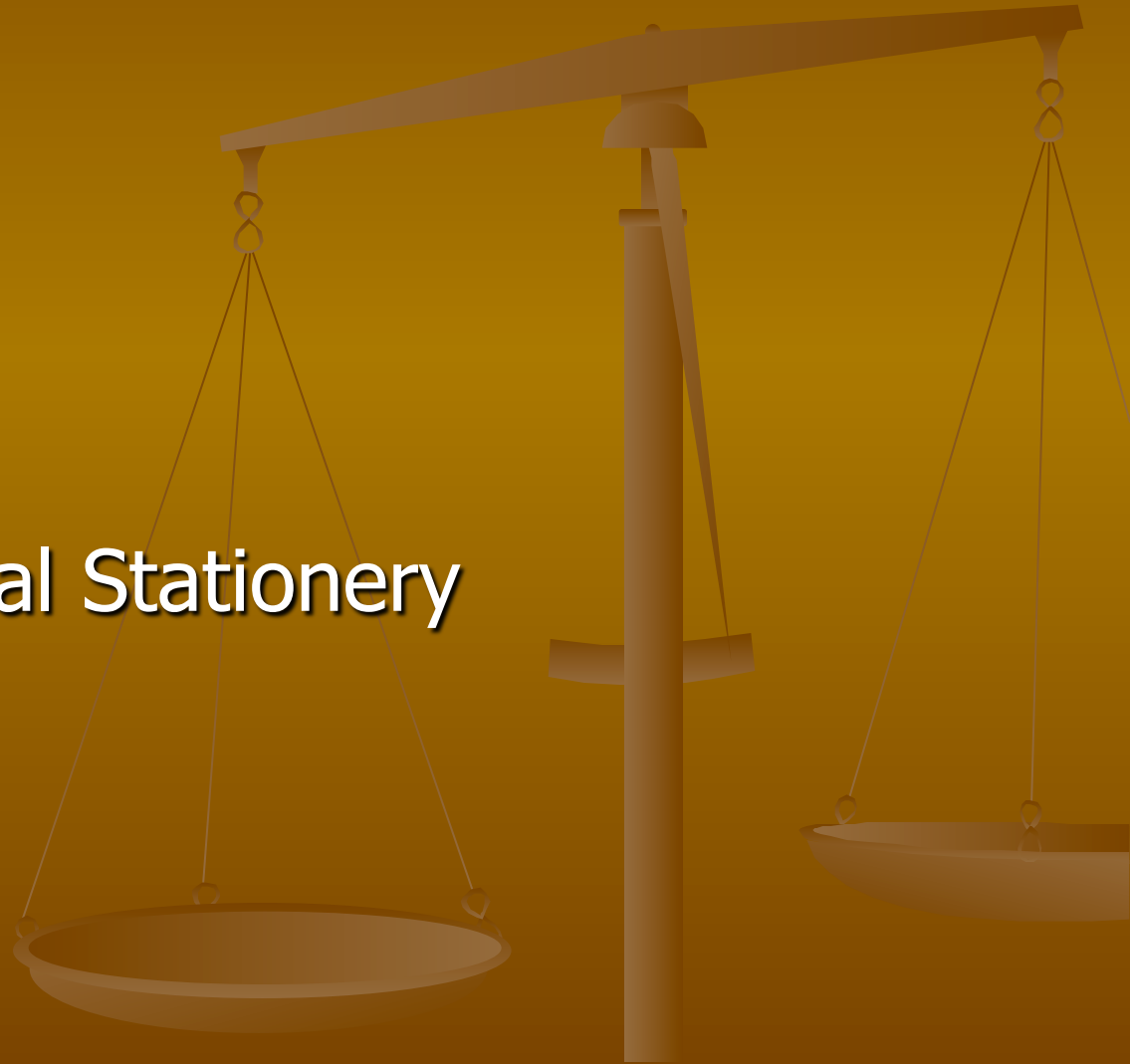
*\*This is interpreted to include judge's interest.*

- A judge should not testify voluntarily as a character witness at any hearing before any court, or judicial or governmental commission.



# Prestige of Office

- Judicial Title
- Judicial Robe
- Official Judicial Stationery



# CANON 2C VIOLATIONS RESULTING IN DISCIPLINE

- A judge, stopped for DUI, warned the officer that she would “regret this” and “watch out from here on in.”
- A judge repeatedly referred to his judicial position in a dispute with a car dealership and identified himself as a judge when he complained to a state agency.
- A judge called the police department about his brother’s speeding ticket and expressed surprise that the officer who had issued the ticket had not recognized the offender as the judge’s brother.

# Official Judicial Stationery



To avoid any potential for – or even the appearance of – misuse of official court stationery, the Judicial Inquiry Commission recommends the simple rule:

Official court stationery should be used only when the matters communicated relate to official court business, the law, the legal system, or the administration of justice – not for a judge's personal purposes.

-- Advisory Opinion 14-925

# Personal “Judicial” Stationery

- A judge may not use personal "judicial" stationery, with a modified version of the Great Seal of Alabama printed on it, for notes of congratulations and thanks, including notes of thanks to campaign supporters.
- A judge may not use personal "judicial" stationery, with the courthouse address printed on it and/or the envelopes for notes of thanks to campaign supporters.

-- Advisory Opinion 14-925

# CANON 2C VIOLATIONS RESULTING IN DISCIPLINE

## Use of Judicial Stationary

- A judge wrote letters on judicial stationery to his son's school, asking that the school prohibit the son's mother from visiting their son at school.

Judges should not use judicial stationery for private disputes or financial, business, or other personal matters where the purpose is to use the prestige of the office to gain some advantage.

# CANON 2C: PRESTIGE OF OFFICE

## Permissible Recommendations

- Letter to State Bar for attorney with pending disciplinary action if letter discloses personal information of his/her experience, character, or ability.  
-- Opinions 86-269 & 96-618
- Character affidavit to law student for Bar admission unless judge knows of litigation before him/her in which the student is or is likely to become involved.  
-- Opinion 89-357

# CANON 2C: PRESTIGE OF OFFICE

## For Benefit of Private Business

- A judge should not allow his/her photograph to be publically displayed at a business. It lends the prestige of the office to the business and conveys the impression the owner is in a special position to influence the judge.

--Opinion 80-92

- A judge should not appear in a drug-abuse-prevention PSA that identifies the hospital sponsoring the PSA.

--Opinion 87-295



# CANON 2C: PRESTIGE OF OFFICE

## Charity Fund-Raising Events: Applicable?

- A judge should not appear in his judicial robe and preside over a mock trial, setting mock fines for arrestees to raise. -- Opinion 85-242
- Pursuant to Canons 1 and 2, a judge is strongly discouraged from allowing an organization to recognize him/her as the guest of honor at a charitable fund-raising event. -- Opinion 07-887
- A judge should not fund-raise from attorneys, litigants, and future litigants; such increases the perception of coercion and/or opportunity to curry his/her favor. -- Opinion 09-900



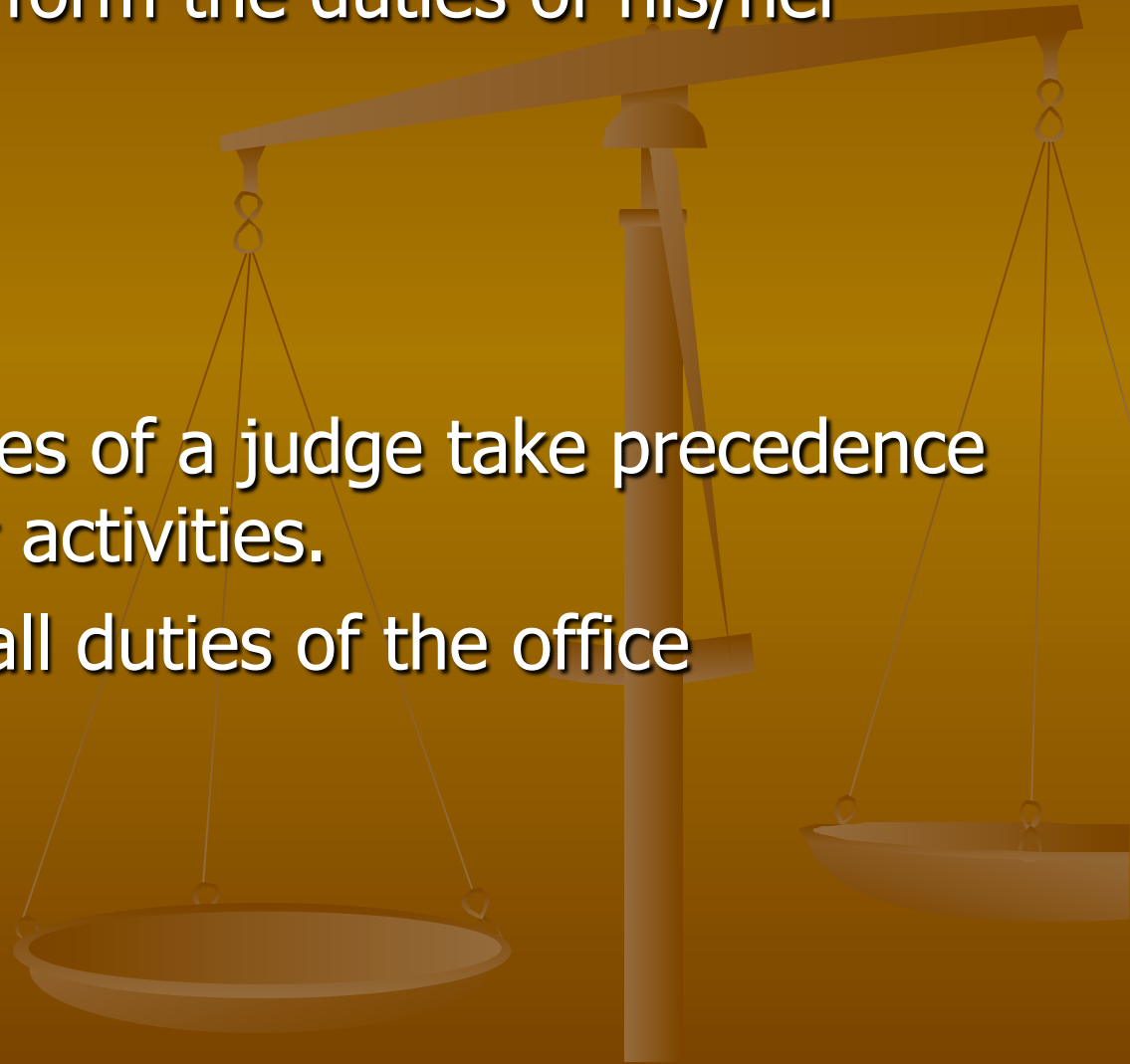
# CANON 3

A judge should perform the duties of his/her office

- Impartially and
- Diligently.

The judicial activities of a judge take precedence over his/her other activities.

- Judicial duties = all duties of the office prescribed by law.



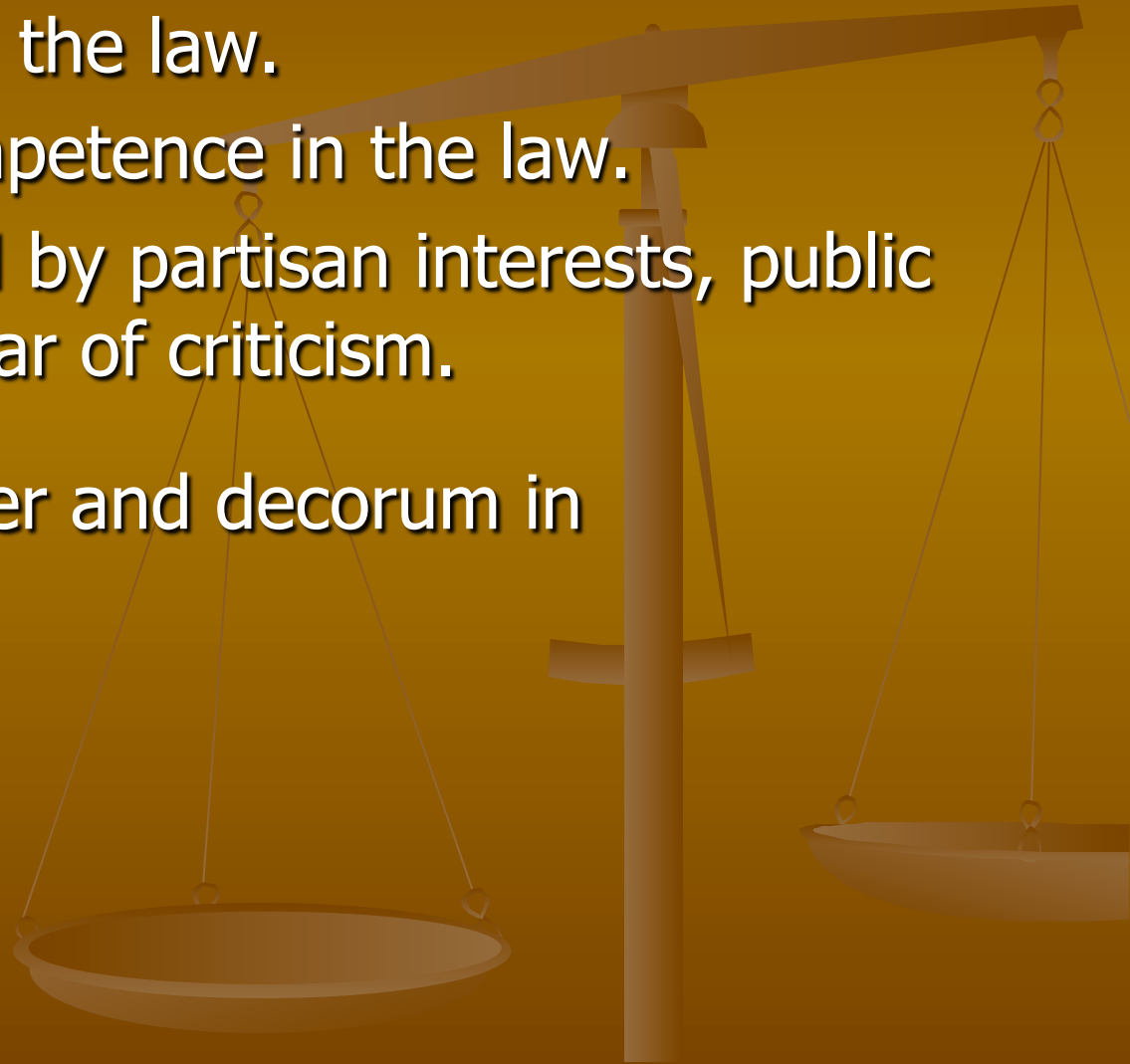
# CANON 3A

(1) Be faithful to the law.

Maintain competence in the law.

Be unswayed by partisan interests, public clamor, or fear of criticism.

(2) Maintain order and decorum in proceedings.

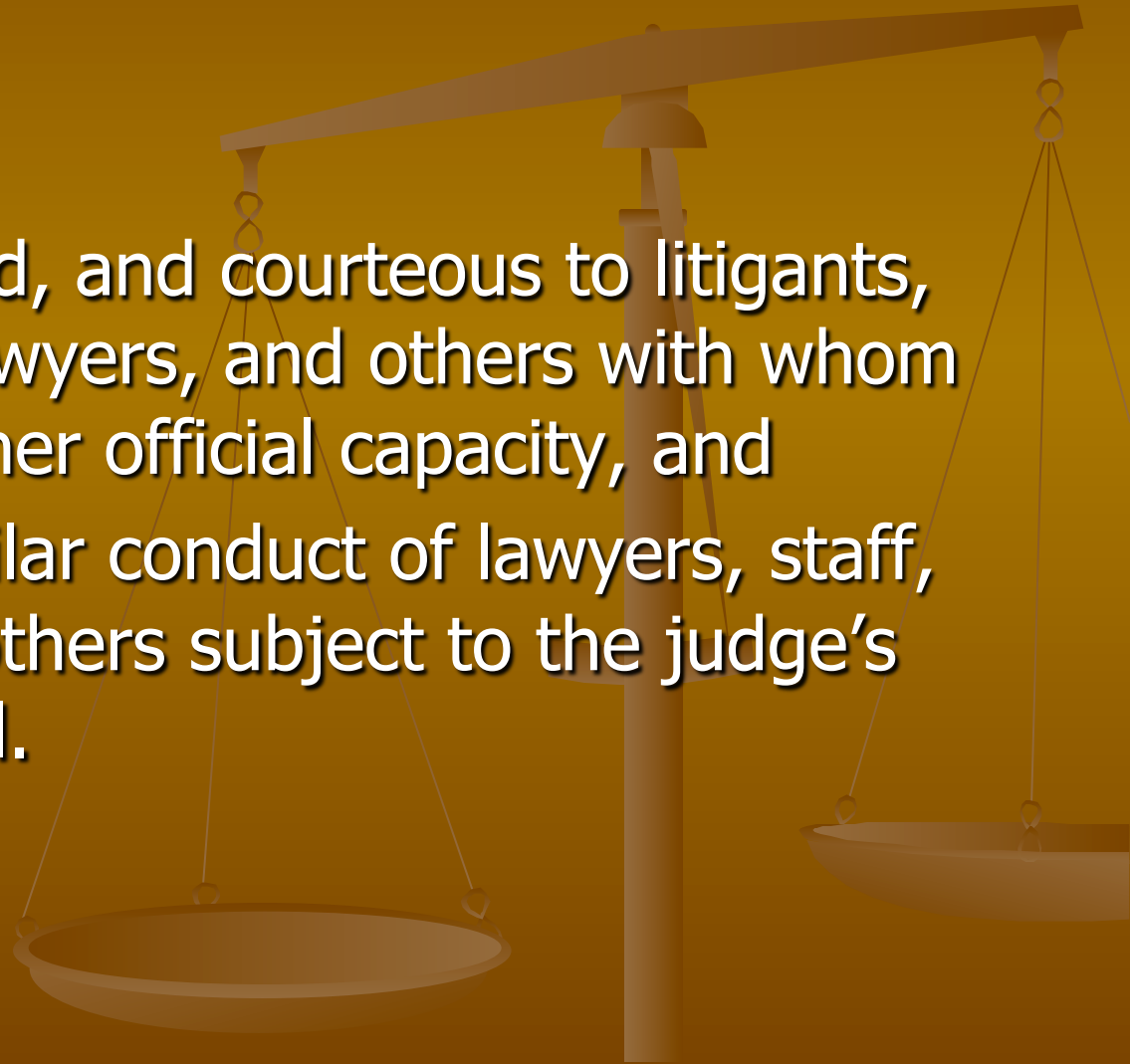


# CANON 3A(3)

## JUDICIAL TEMPERAMENT

A judge should:

- Be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he/she deals in his/her official capacity, and
- Should require similar conduct of lawyers, staff, court officials, and others subject to the judge's direction and control.



# CANON 3A(3)

## JUDICIAL TEMPERAMENT



“Patience and gravity of hearing are an essential part of justice ....”

--- *Bacon's Essay of Judicature*

A judge's judicial temperament can do him/her more good or more harm than any ruling he/she will ever make.

--- R. Cole

“Worse than judicial error is to mishandle impatiently the small affairs of momentarily helpless people . . . .”

--- Handbook for Penn. Trial

Judges

# CANON 3A(3)

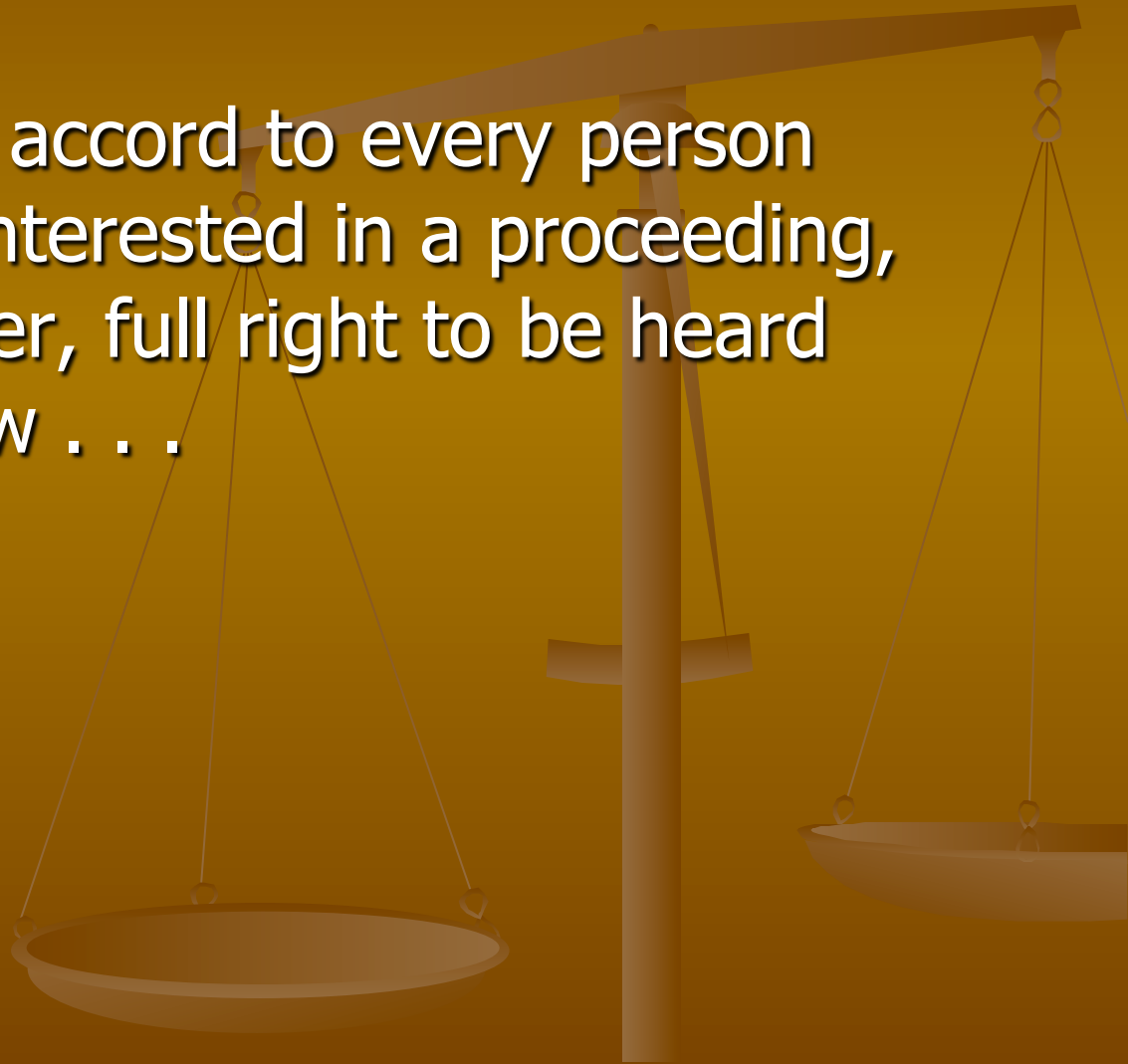
## JUDICIAL TEMPERAMENT

- **To attorney:** “When I say sit, you sit. When I say stand, you stand. When I say speak, you speak. When I say don’t speak, you don’t speak.”
- **To witness:** “You’re lying. I don’t believe a word you’re saying.”
- **To witness who was having difficulty remembering an occurrence:** “You need to get your damn memory back.”

# **CANON 3A(4)**

## **FULL RIGHT TO BE HEARD**

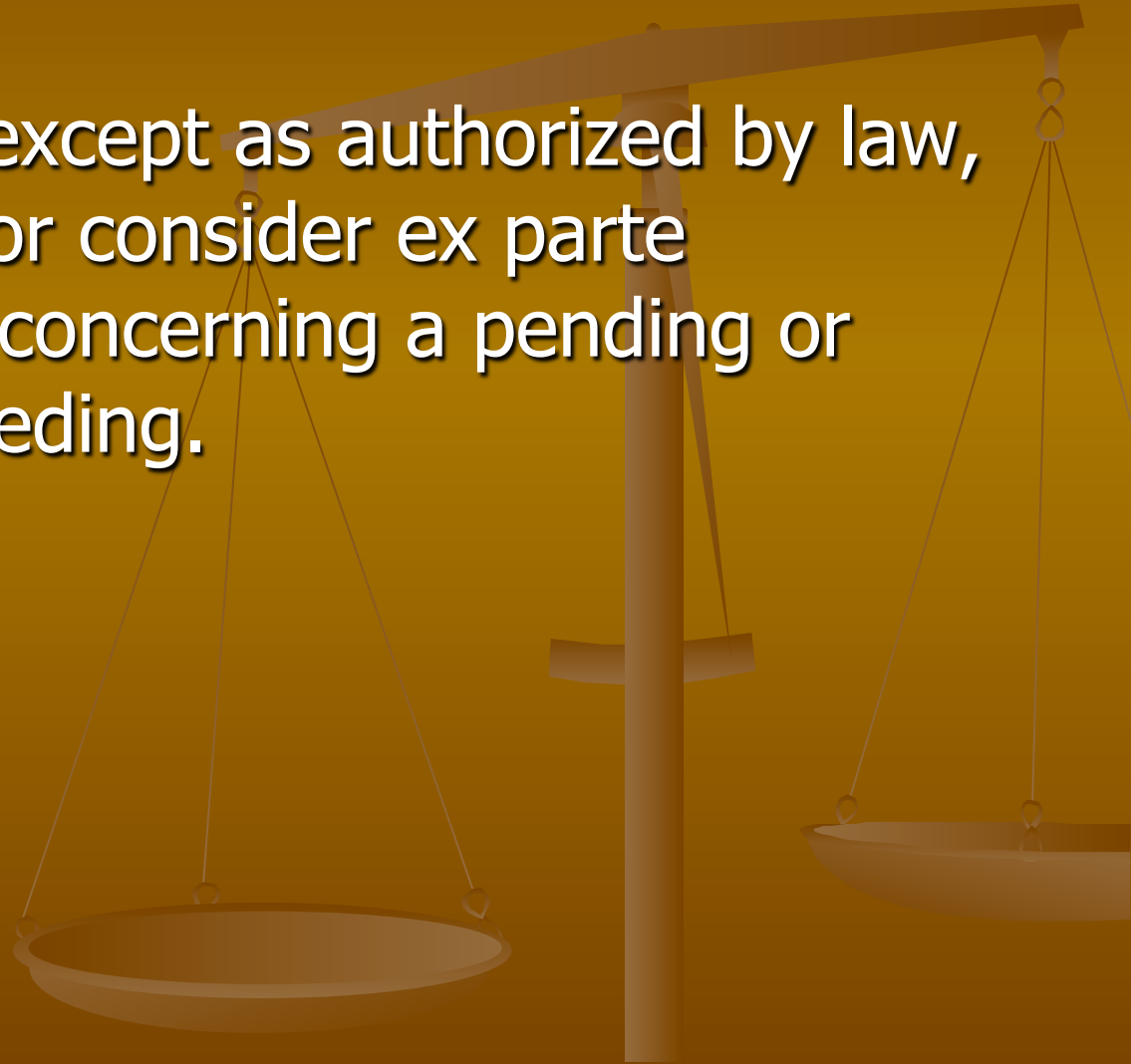
A judge should accord to every person who is legally interested in a proceeding, or his/her lawyer, full right to be heard according to law . . .



# **CANON 3A(4)**

## **EX PARTE COMMUNICATIONS**

A judge should, except as authorized by law, neither initiate nor consider ex parte communications concerning a pending or impending proceeding.



# CANON 3A(4)

## EX PARTE COMMUNICATIONS

- A communication about a case by a party to a judge without notice to the other party.  
*"It is private time with the judge."*
- However, it is not limited to a party or party's attorney.
- Private conversation with GAL prohibited. *Ex parte R.D.N.*, 918 So. 2d 100 (Ala. 2005).
- Applies to both procedural and substantive matters.



## CANON 3A(4) EXCEPTIONS

- Administrative matters, such as scheduling, is generally acceptable if communication does not confer an advantage on one party over another.
- Court personnel, who are subject to the judge's supervision and where the communication can be construed as aiding the judge in carrying out his/her adjudicative duties. Canon 3A(4) *Commentary* and Advisory Opinion 94-523.

--

# CANON 3A(4) EXCEPTIONS: Experts

- The expert must be disinterested, impartial, and have no connection with any party or any participant.
- The advice must be limited to the law applicable to the proceeding.
- If the judge considers that justice would require it, the judge should give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.
- Notice to the parties largely eliminates the danger of appearance of impropriety while preserving the benefits of obtaining outside help. (*Gov. Guy*) *Hunt v. State*, 642 So. 2d 999 (Ala. Crim. App. 1993)

# CANON 3A(4) EXCEPTION

## Another Judge

➤ Communications by a judge with another judge that display a tendency to influence or impede the judge's decision violate the prohibition against ex parte communications.

-- Advisory Opinion 94-523

➤ If judge obtains *disputed factual* information that will influence the judge's opinion of the merits of the case, the judge is disqualified.

-- Advisory Opinion 93-503

➤ The judge who is consulted probably would be disqualified if the case were to come before him or her in the future.

-- Advisory Opinion 94-523

# CANON 3A(4) EXCEPTION

## Emergency

(Rule 2.9(A)(1), Model Code of Judicial Conduct, which Alabama has not adopted)

- When circumstances require, for emergency purposes, usually in the context of public-safety concerns.
- Do not address substantive matters.
- Two limitations: (1) the judge must reasonably believe that no party will gain a procedural or tactical advantage; and (2) the judge must promptly notify all other parties of the substance of the ex parte communication and allow an opportunity to respond.

# CANON 3A(4)

## EX PARTE COMMUNICATIONS

### Proposed Orders

- May a judge to ask a lawyer to prepare a proposed order?

Yes, if the opposing party is apprised of the request and given an opportunity to respond to the proposed findings and conclusions – prior to the judge's final order. All communications regarding the request and the submission of the proposed order should include all attorneys and any unrepresented party.

# CANON 3A(4)

## EX PARTE COMMUNICATIONS

- What should judge do if he/she receives an unsolicited letter seeking to influence his/her decision in a case?  
Promptly provide a copy to each party's counsel.
- Can a judge conduct a factual investigation?  
No. *See Campbell v. Campbell*, 316 So. 2d 693 (Ala. Civ. App. 1975) (judge learned from college registrar that parties' child was a student; fact impacted alimony determination).

# CANON 3A(5)

**A probate judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission.**

## *Commentary*

*Prompt disposition of the court's business requires a judge*

- *to devote adequate time to his/her duties,*
- *to be punctual in attending court and expeditious in determining matters under submission, and*
- *to insist that court officials, litigants and their lawyers cooperate with him/her to that end.*



# CANON 3A(6): PUBLIC COMMENT

**A judge should abstain from public comment about a pending or impending proceeding in any court ....**

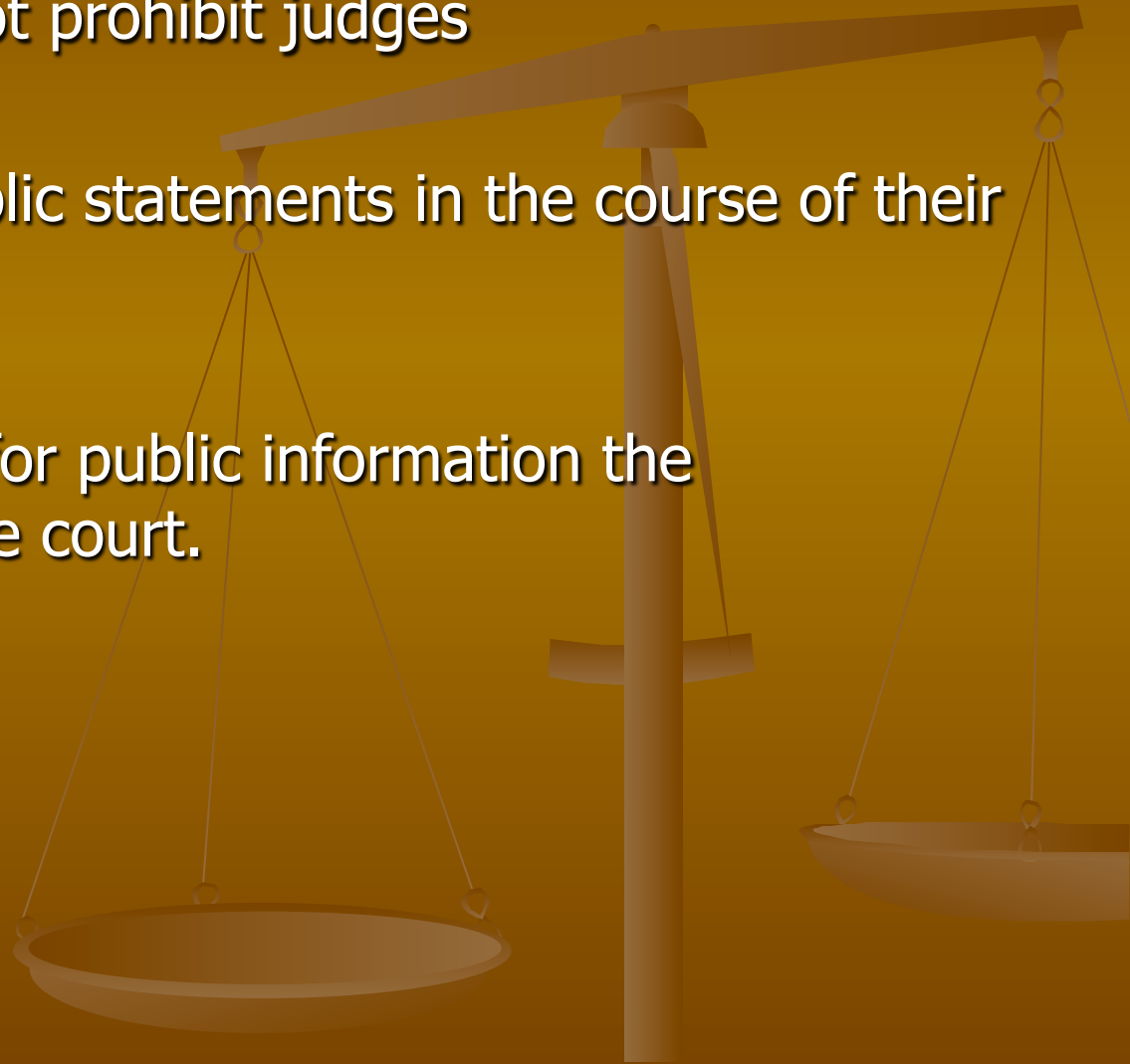
- *Impending* case: not pending, but poised to be pending.
- A public comment is not prohibited under Canon 3A(6) unless it can reasonably be expected to affect the outcome or impair the fairness of a proceeding pending or impending in any court.



# CANON 3A(6): PUBLIC COMMENT

This subsection does not prohibit judges

- from making public statements in the course of their official duties or
- from explaining for public information the procedures of the court.



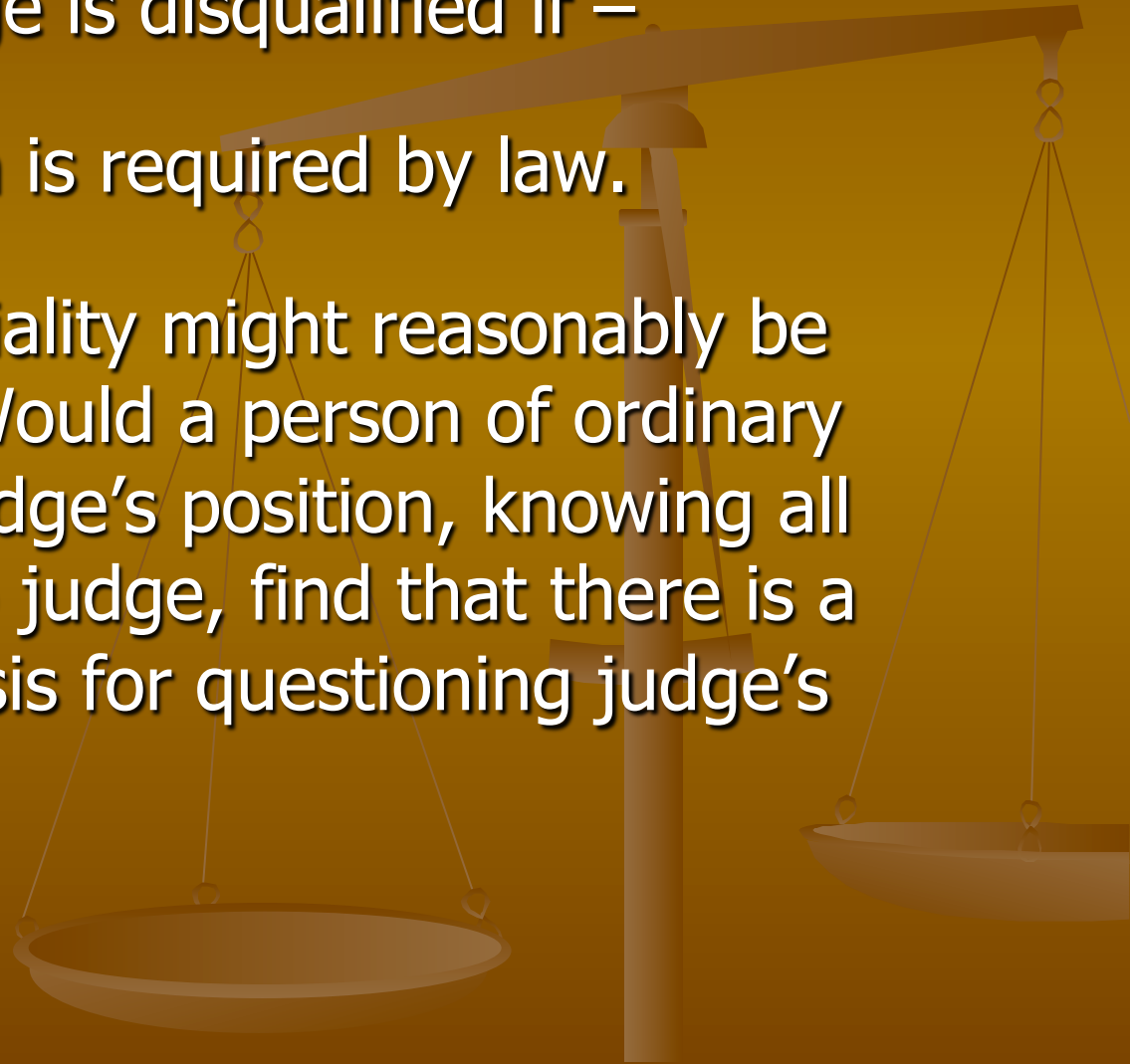
# CANON 3A(6): PUBLIC COMMENT

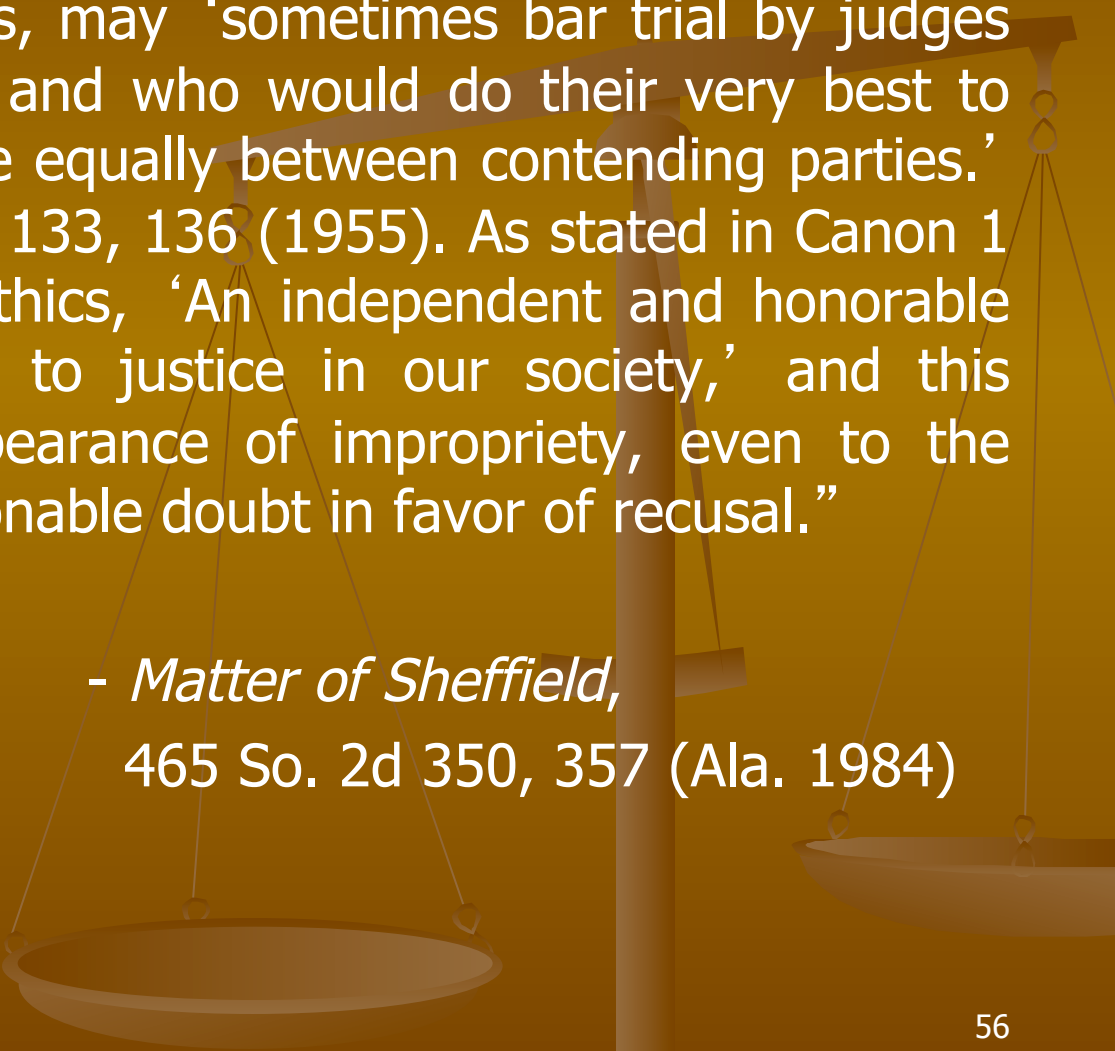
- Public discussion by judges or judicial candidates of an issue of public importance cannot be proscribed or punished under Canon 3A(6) merely because that issue may happen to be the subject of a pending or impending proceeding in any court.
- A judicial candidate's discussion of issues is protected by the 1<sup>st</sup> Amendment. Thus, judges' and candidates' discussion of an issue related to a proceeding, but not about the merits thereof, is protected by the 1<sup>st</sup> Amendment."

# Canon 3C: DISQUALIFICATION

**Canon 3C:** A judge is disqualified if –

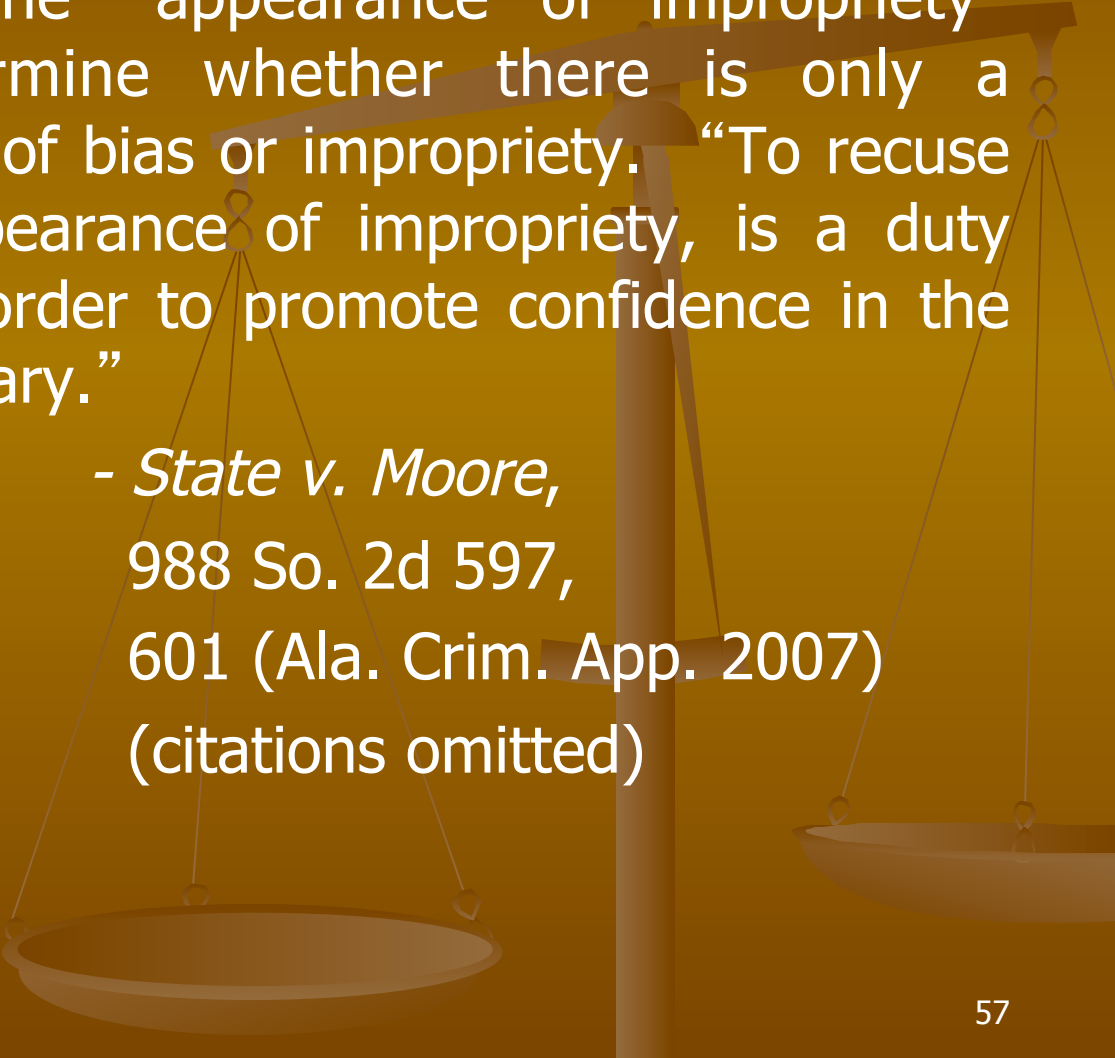
- (1) Disqualification is required by law.
- (1) Judge's impartiality might reasonably be questioned. [Would a person of ordinary prudence in judge's position, knowing all facts known to judge, find that there is a reasonable basis for questioning judge's impartiality?]





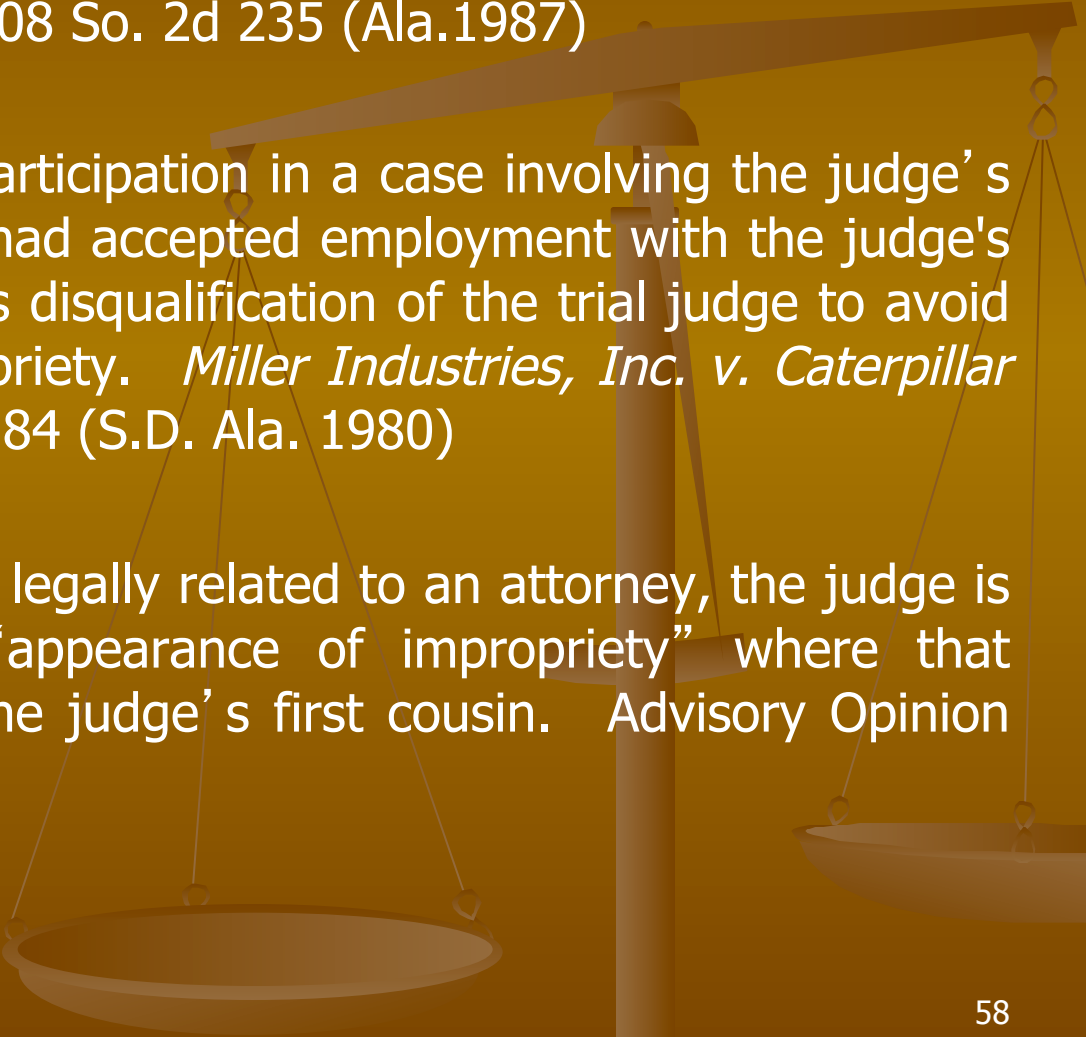
“ [T]he reasonable person/appearance of impropriety test, as now articulated in Canon 3(C)(1), in the words of the Supreme Court of the United States, may ‘sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.’ *In re Murchison*, 349 U.S. 133, 136 (1955). As stated in Canon 1 of the Code of Judicial Ethics, ‘An independent and honorable judiciary is indispensable to justice in our society,’ and this requires avoiding all appearance of impropriety, even to the point of resolving all reasonable doubt in favor of recusal.”

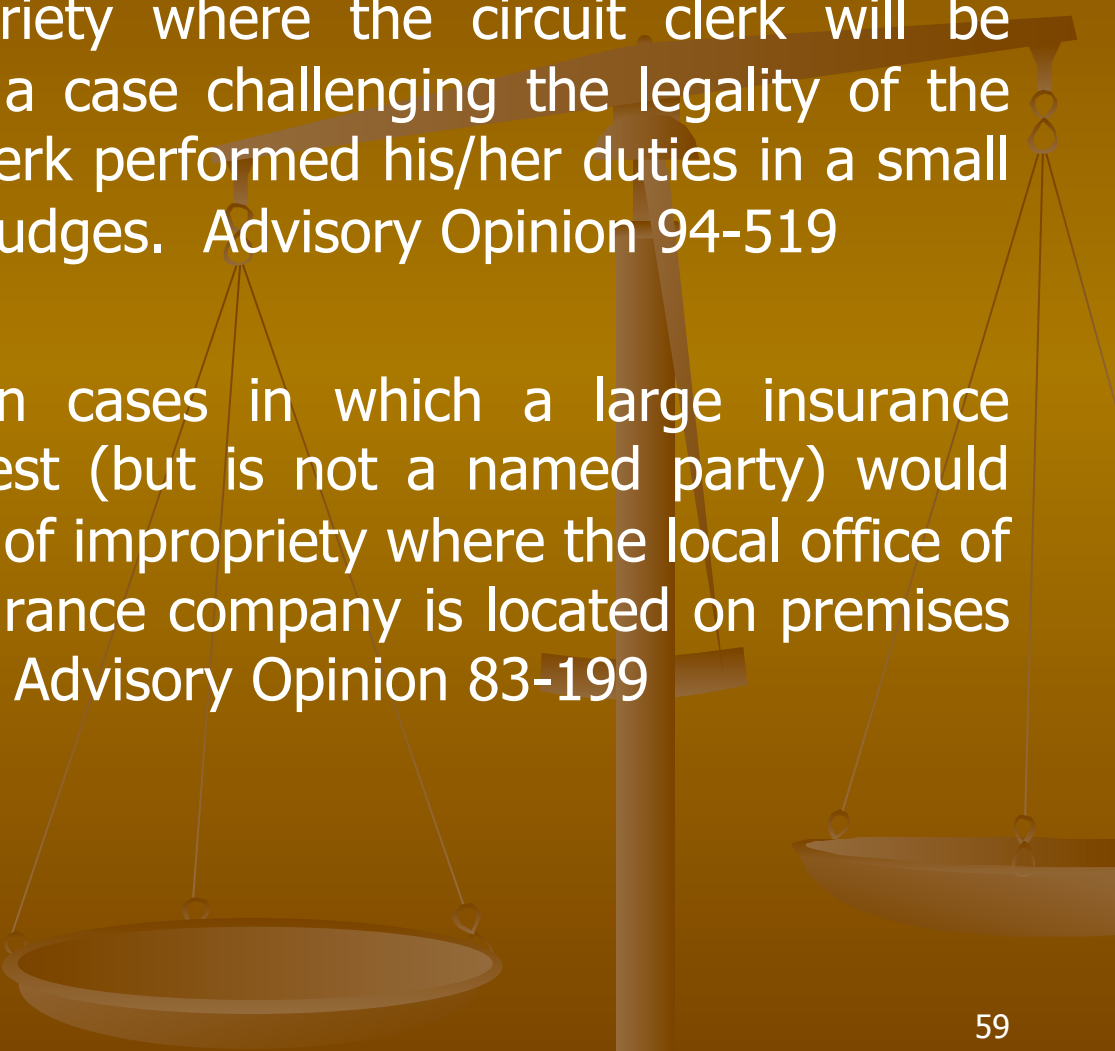
- *Matter of Sheffield*,  
465 So. 2d 350, 357 (Ala. 1984)



Even after determining he/she has no actual bias, the judge should apply the “appearance of impropriety” standard — to determine whether there is only a reasonable appearance of bias or impropriety. “To recuse where there is an appearance of impropriety, is a duty owed to the public in order to promote confidence in the impartiality of the judiciary.”

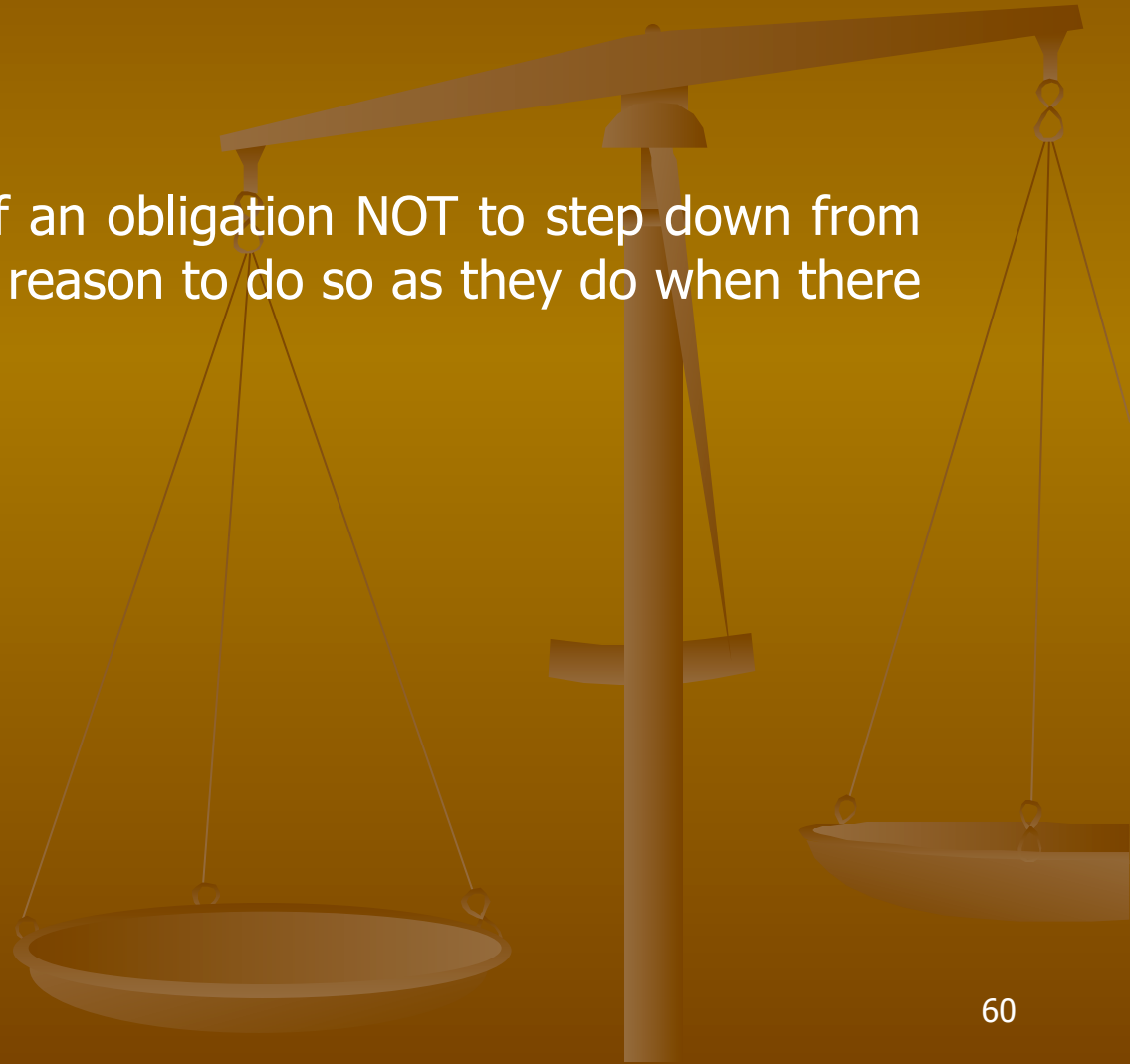
- *State v. Moore*,  
988 So. 2d 597,  
601 (Ala. Crim. App. 2007)  
(citations omitted)

- 
- A bank's common, albeit unofficial, description of a judge's brother as a “director” of the bank was sufficient of itself to give rise to an appearance of impropriety for the judge to sit in a case involving the bank. *Ex parte Jackson*, 508 So. 2d 235 (Ala.1987)
  - A law clerk's continued participation in a case involving the judge's former law firm after he had accepted employment with the judge's former law firm mandates disqualification of the trial judge to avoid the appearance of impropriety. *Miller Industries, Inc. v. Caterpillar Tractor Co.*, 516 F. Supp. 84 (S.D. Ala. 1980)
  - Although the judge is not legally related to an attorney, the judge is disqualified under the “appearance of impropriety” where that attorney is engaged to the judge's first cousin. Advisory Opinion 93-486

- 
- The professional relationship between a circuit judge and a circuit clerk, in and of itself, is not such as would create the appearance of impropriety where the circuit clerk will be called as a witness in a case challenging the legality of the manner in which the clerk performed his/her duties in a small circuit with two circuit judges. Advisory Opinion 94-519
  - A judge's presiding in cases in which a large insurance company has an interest (but is not a named party) would present an appearance of impropriety where the local office of the agency of that insurance company is located on premises leased from the judge. Advisory Opinion 83-199

BUT NOTE:

Judges have as much of an obligation NOT to step down from a case when there is no reason to do so as they do when there is such a reason.



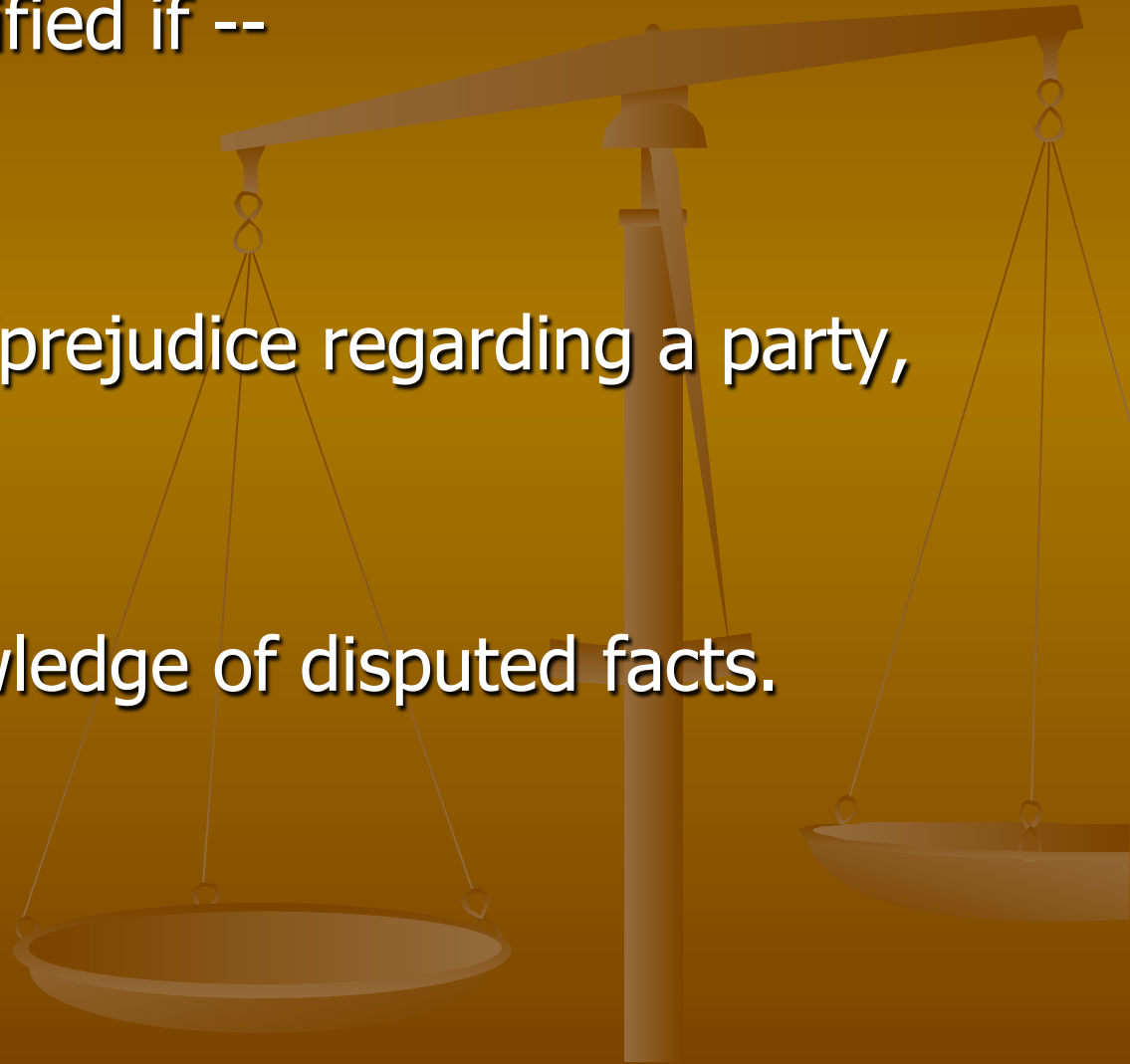


# Canon 3C(a): DISQUALIFICATION

A judge is disqualified if --

Judge has –

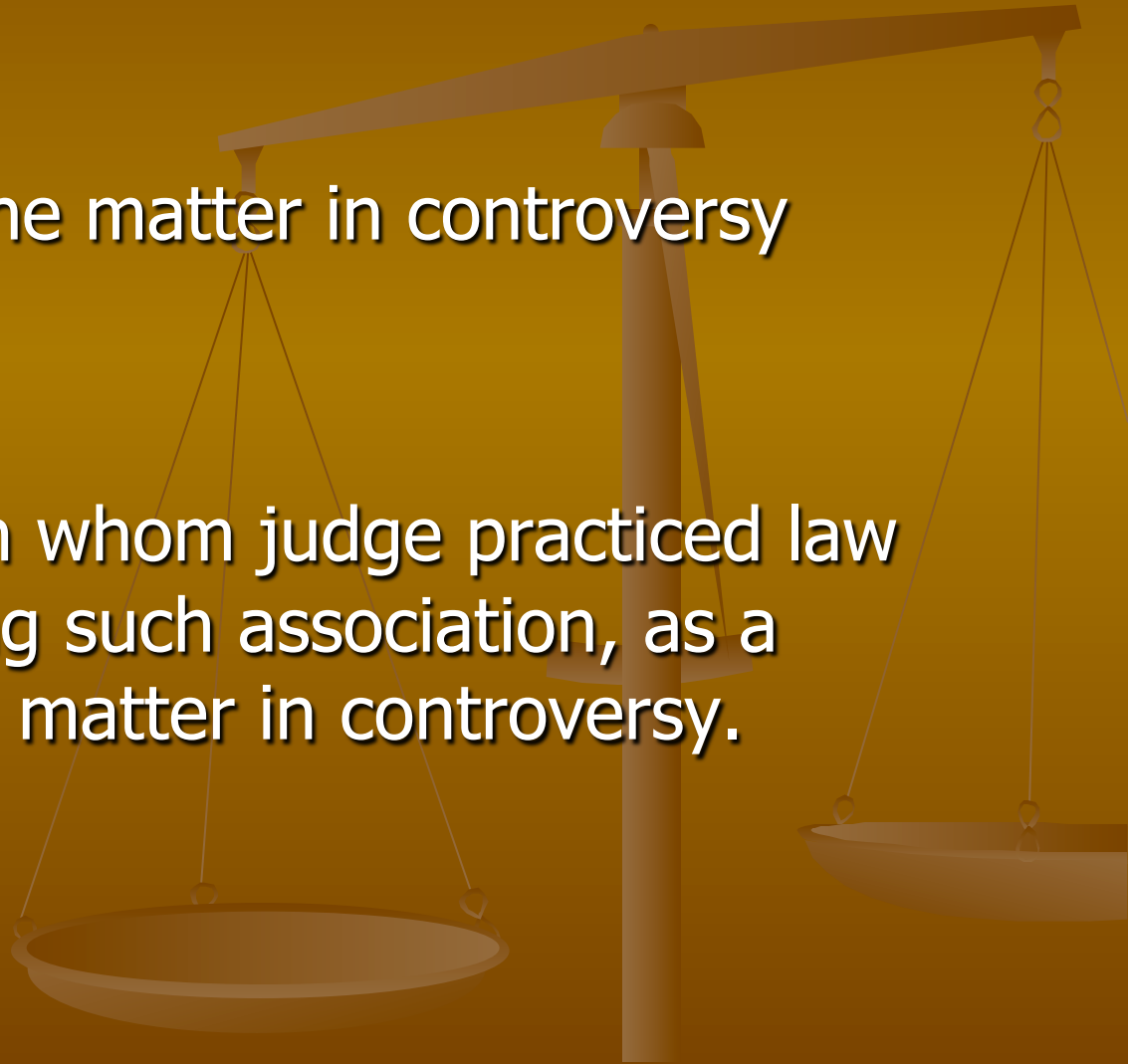
- Personal bias/prejudice regarding a party,  
or
- Personal knowledge of disputed facts.



# Canon 3C(b): DISQUALIFICATION

Judge served as

- A lawyer in the matter in controversy  
or
- A lawyer with whom judge practiced law served, during such association, as a lawyer in the matter in controversy.



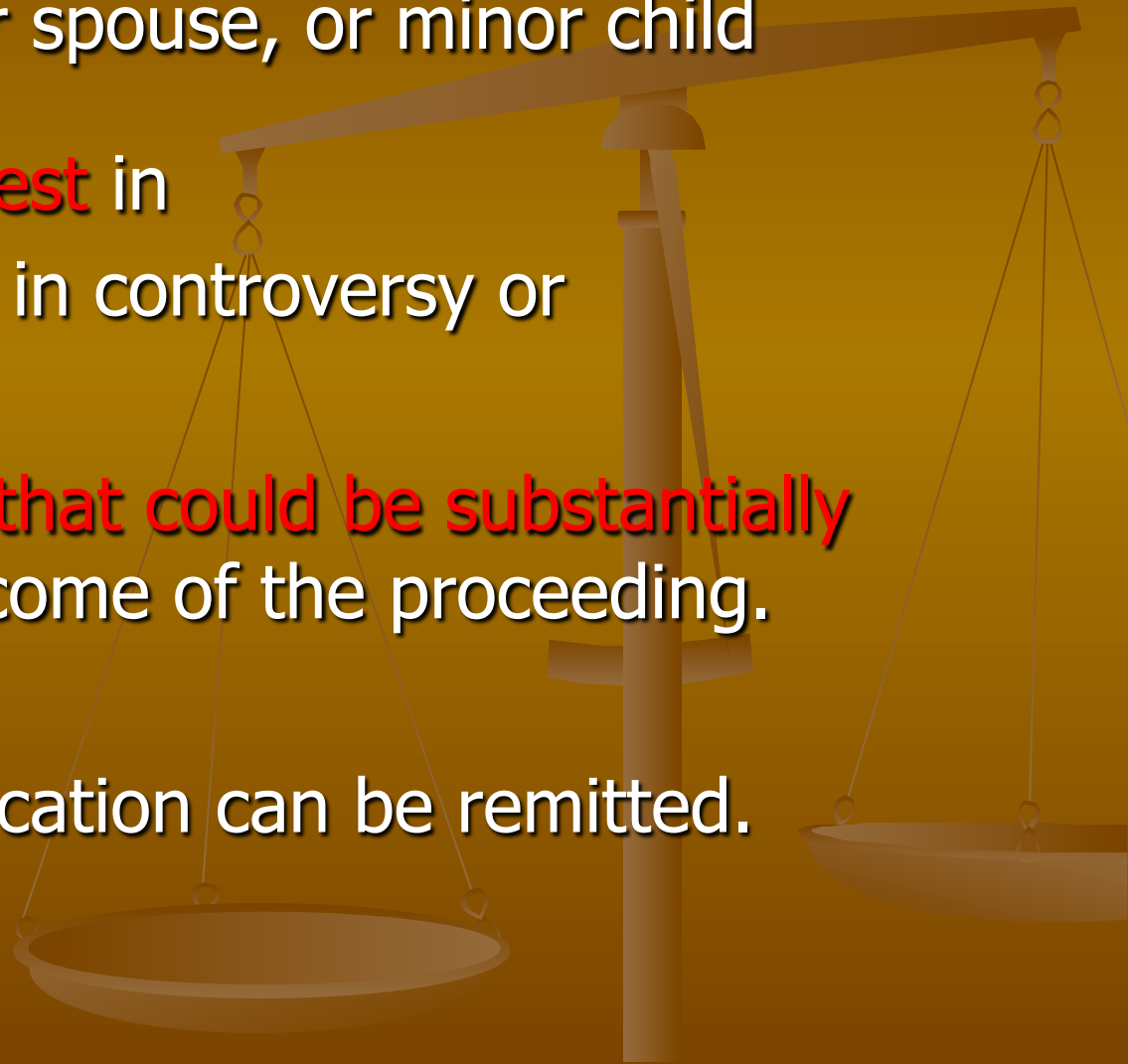
# Canon 3C(c): DISQUALIFICATION

Judge knows he/she—individually or as fiduciary— or his/her spouse, or minor child

has a **financial interest** in

- the subject matter in controversy or
- a party or
- **any other interest that could be substantially affected** by the outcome of the proceeding.

This disqualification can be remitted.



# DISQUALIFICATION

## “Matter in Controversy”

In *Rushing v. City of Georgiana*, 361 So. 2d 11 (Ala. 1978), the Alabama Supreme Court gave the phrase “matter in controversy” a broad definition:

Cases involve the same “matter in controversy” where the same fact, event, course of events, circumstance, situation or question is relevant to both cases. Opinion 02-805

# Canon 3C(d): DISQUALIFICATION

Judge or his/her spouse or a person within 4<sup>th</sup> degree of relationship to either of them, or the spouse of such person is

- a party;
- an officer, director, or trustee of a party;
- known by judge to have interest that could be substantially affected by outcome;
- to judge's knowledge, likely to be material witness.

This disqualification can be remitted.

# Canon 3C: DISQUALIFICATION

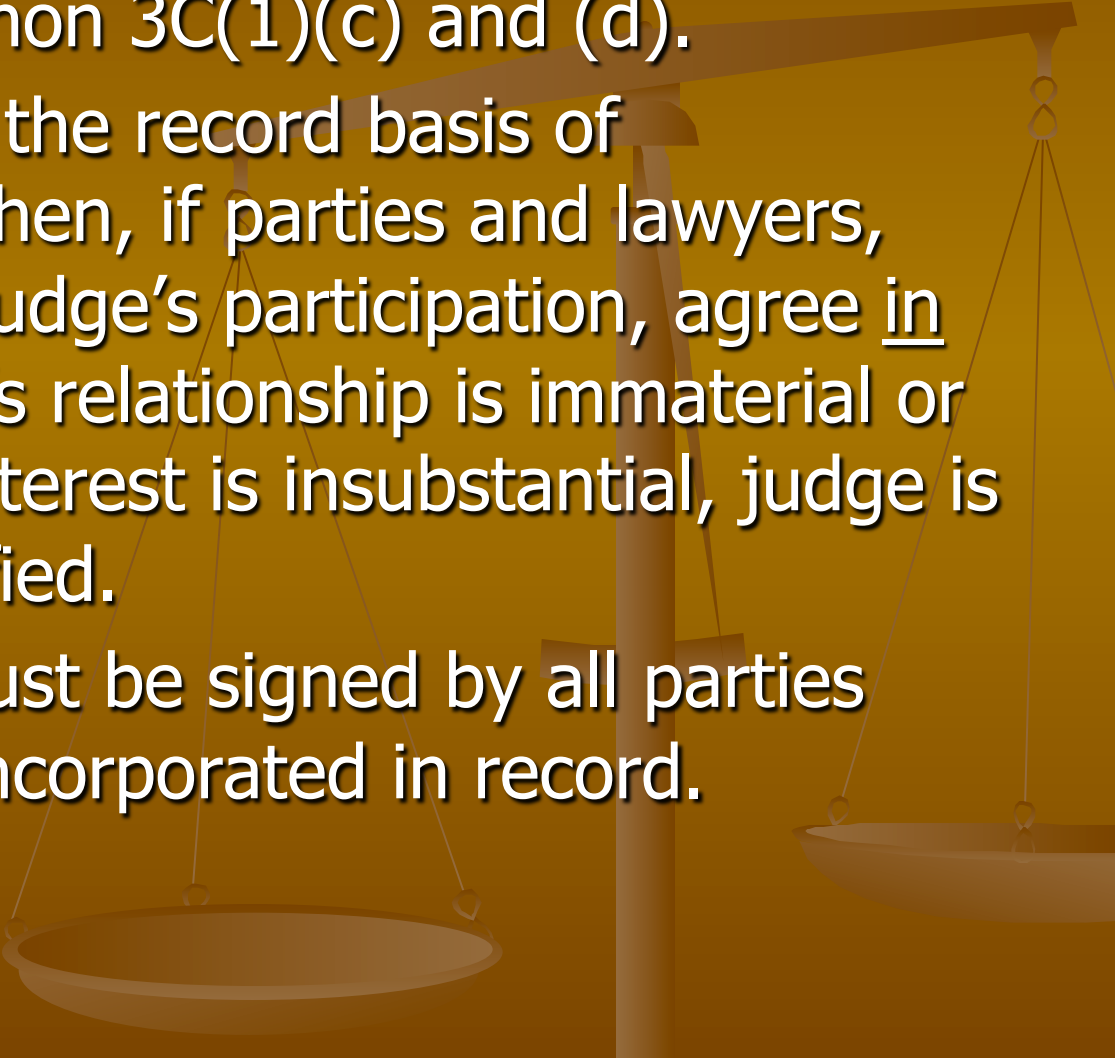
## Lawyer Relative's Firm

If a member of your 1<sup>st</sup> cousin-attorney's law firm is representing a party?

- You must disclose relationship and determine if a reasonable question of impartiality is present.
- One factor is whether the lawyer-relative has an interest in firm that could be substantially affected by outcome of proceeding.
- You are not required to initiate investigation to make that determination.

Opinion

# CANON 3D: REMITTAL OF DISQUALIFICATION

- Applies only to Canon 3C(1)(c) and (d).
  - Judge discloses in the record basis of disqualification. Then, if parties and lawyers, independently of judge's participation, agree in writing that judge's relationship is immaterial or his/her financial interest is insubstantial, judge is no longer disqualified.
  - The agreement must be signed by all parties and lawyers and incorporated in record.
- 



# CANON 4

## Extra-Judicial Activities

A judge may engage in activities to improve the law, the legal system, and the administration of justice, e.g., teach, appear at a public hearing before an executive/legislative body, etc. if

- It does not interfere with the proper performance of his/her judicial duties.
- He/she does not cast doubt on his/her capacity to decide impartially any issue that may come before him.

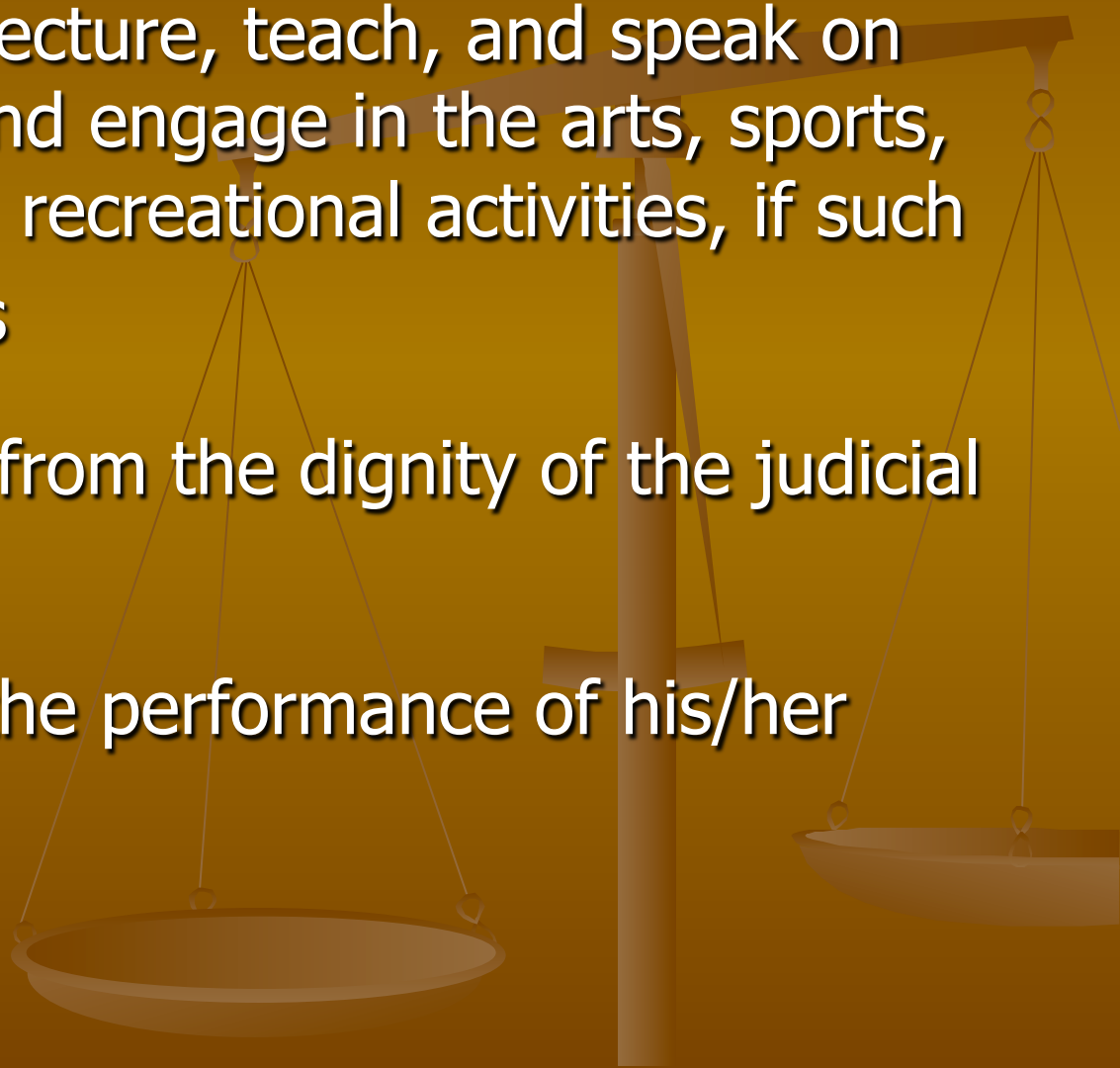


# Canon 5A

## Avocational Activities

A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities

- Do not detract from the dignity of the judicial office or
- Interfere with the performance of his/her judicial duties.

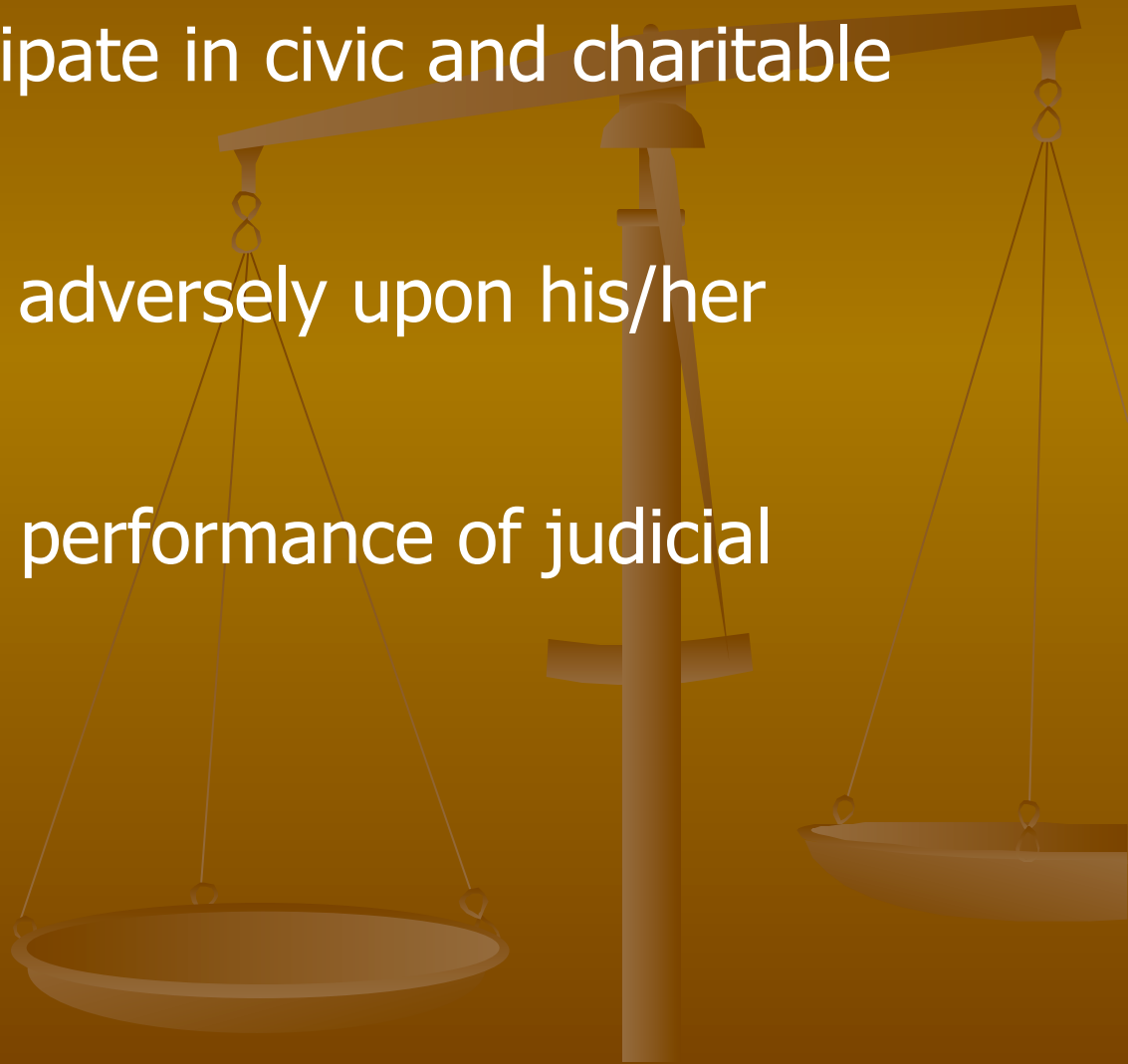


# Canon 5B

## CIVIC & CHARITABLE ACTIVITIES

A judge may participate in civic and charitable activities if they

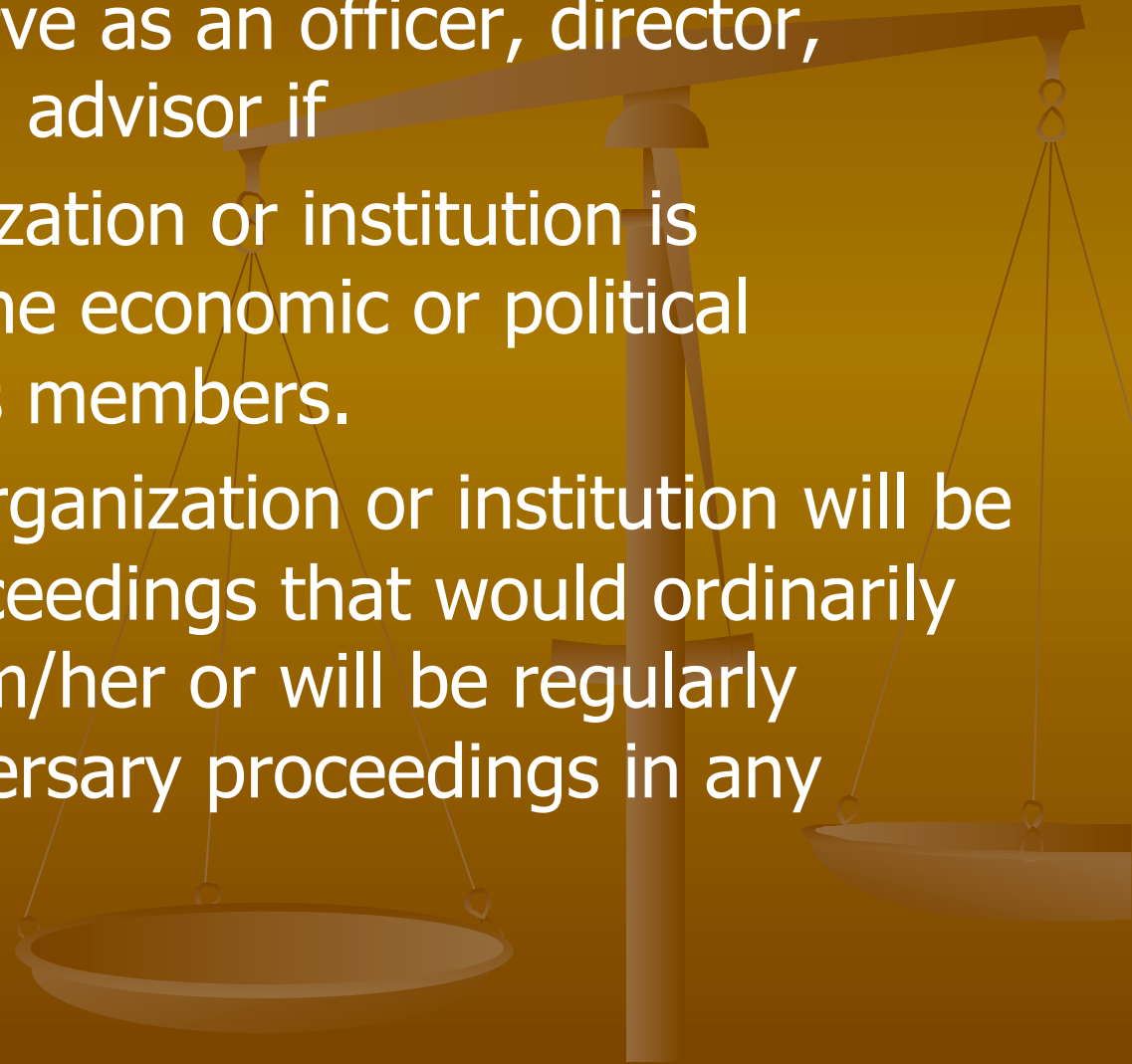
- Do not reflect adversely upon his/her impartiality or
- Interfere with performance of judicial duties.



# Leadership in Civic & Charitable Activities

A judge may not serve as an officer, director, trustee, or non-legal advisor if

- The civic organization or institution is conducted for the economic or political advantage of its members.
- It is likely the organization or institution will be engaged in proceedings that would ordinarily come before him/her or will be regularly engaged in adversary proceedings in any court.



# CANON 5B: LIMITATIONS TO CIVIC & CHARITABLE ACTIVITIES

- It is desirable that a judge not solicit funds or use or permit the use of the prestige of his/her office for that purpose, but he/she may be listed as an officer, director, or trustee.

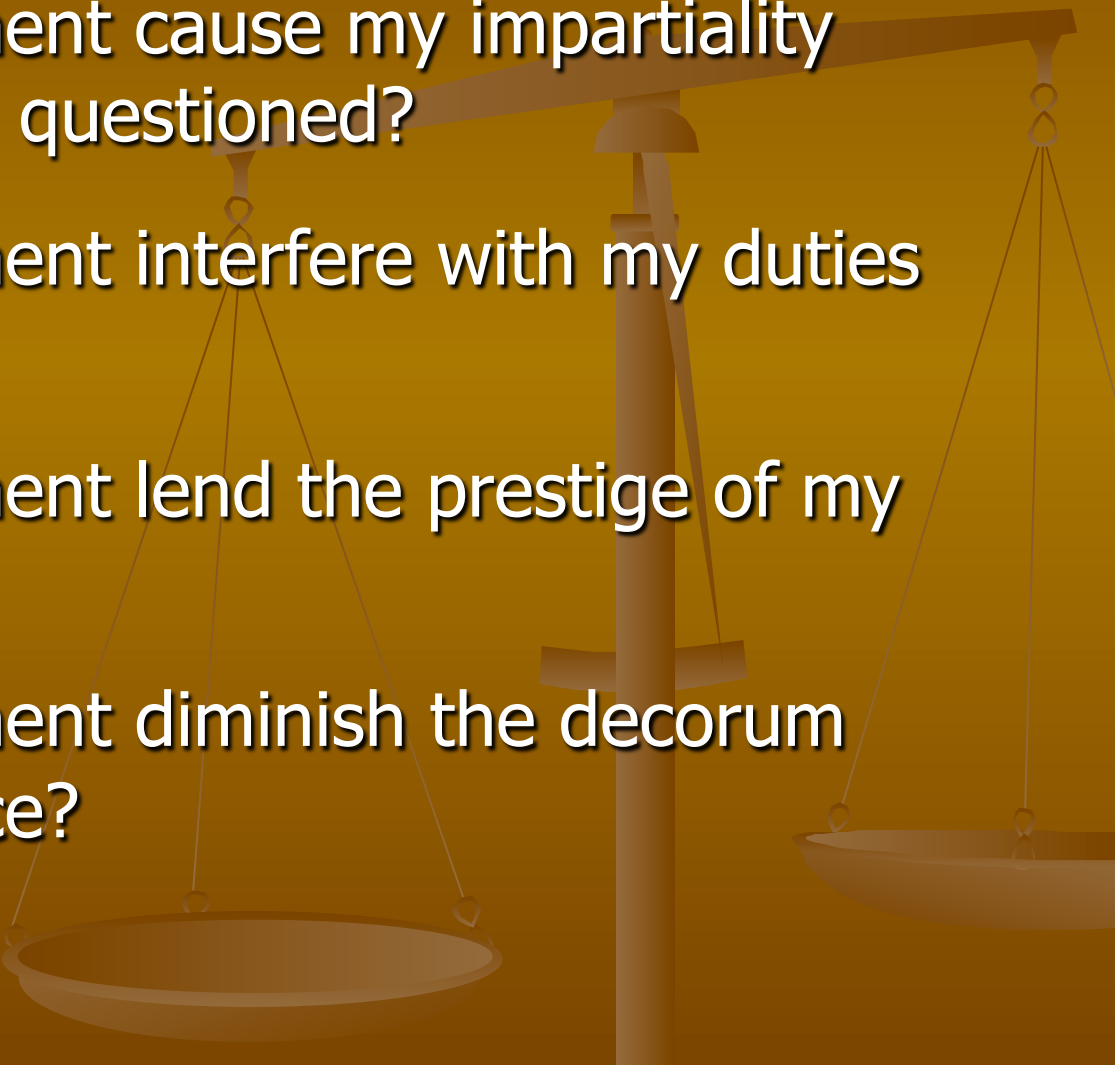
*This does not apply to probate judges, but other canons may be triggered, depending on the circumstances.*

- A judge should not give investment advice, but he/she may serve on board of directors or trustees that has the responsibility for approving investment decisions.

# CIVIC DO'S AND DON'TS

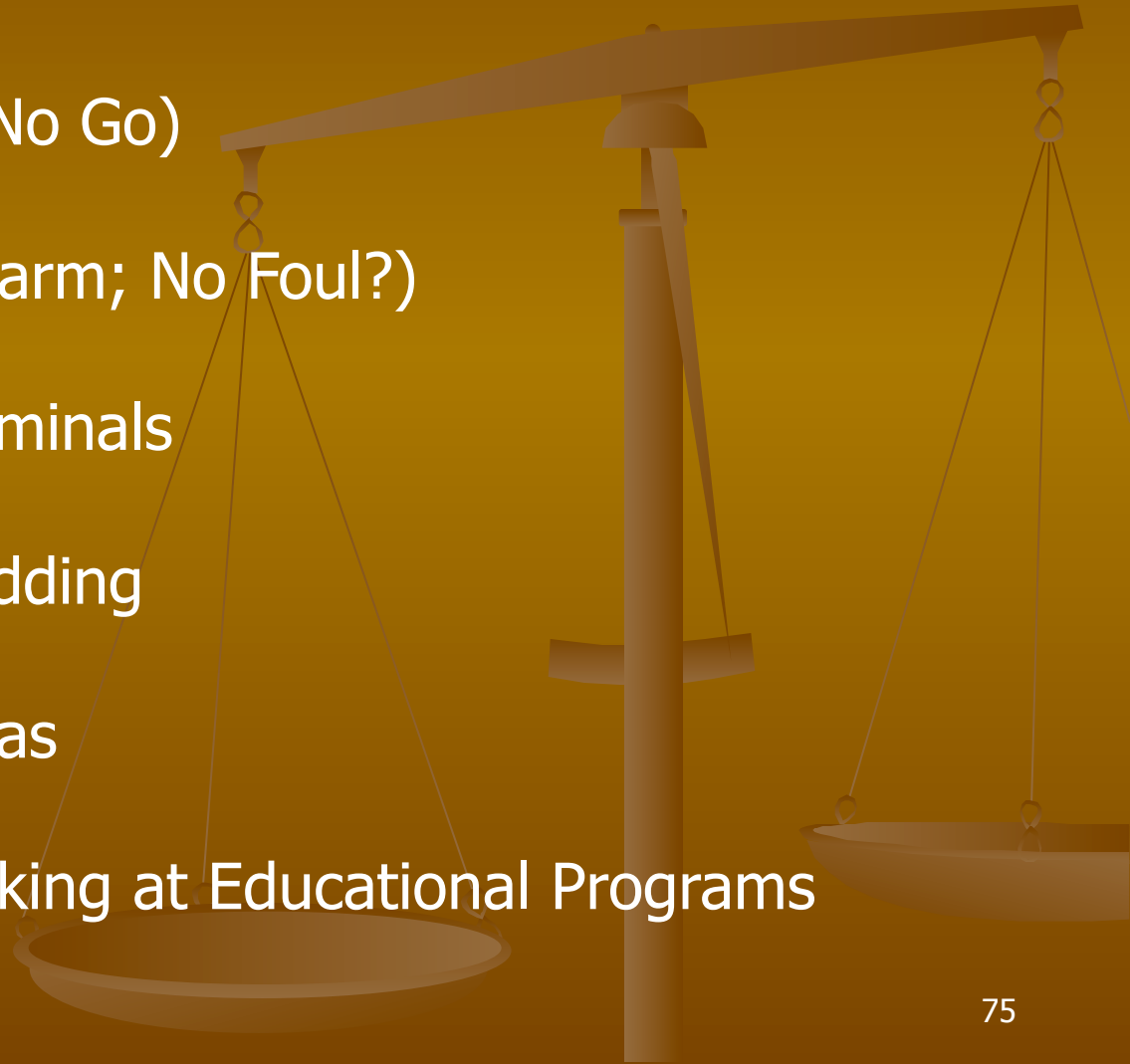
- May not serve on board of directors of substance-abuse council if the council is a provider of services from which the court-referral officer may choose in making referral recommendations to the judge. Opinion 99-738.
- Should not serve as officer or member of board of directors of child-advocacy center because it would require judge to recuse in cases in which the center is involved. Opinion 87-293.

# When Considering a Civic Activity

1. Will my involvement cause my impartiality reasonably to be questioned?
  2. Will my involvement interfere with my duties as a judge?
  3. Will my involvement lend the prestige of my office?
  4. Will my involvement diminish the decorum befitting my office?
- 

# AVOIDABLE ETHICAL ERRORS

- A Wink and a Nod
- Quid Pro Quo (is a No Go)
- Relationships (No Harm; No Foul?)
- Associating with Criminals
- Statements: Just Kidding
- Manifestations of Bias
- Attending and Speaking at Educational Programs

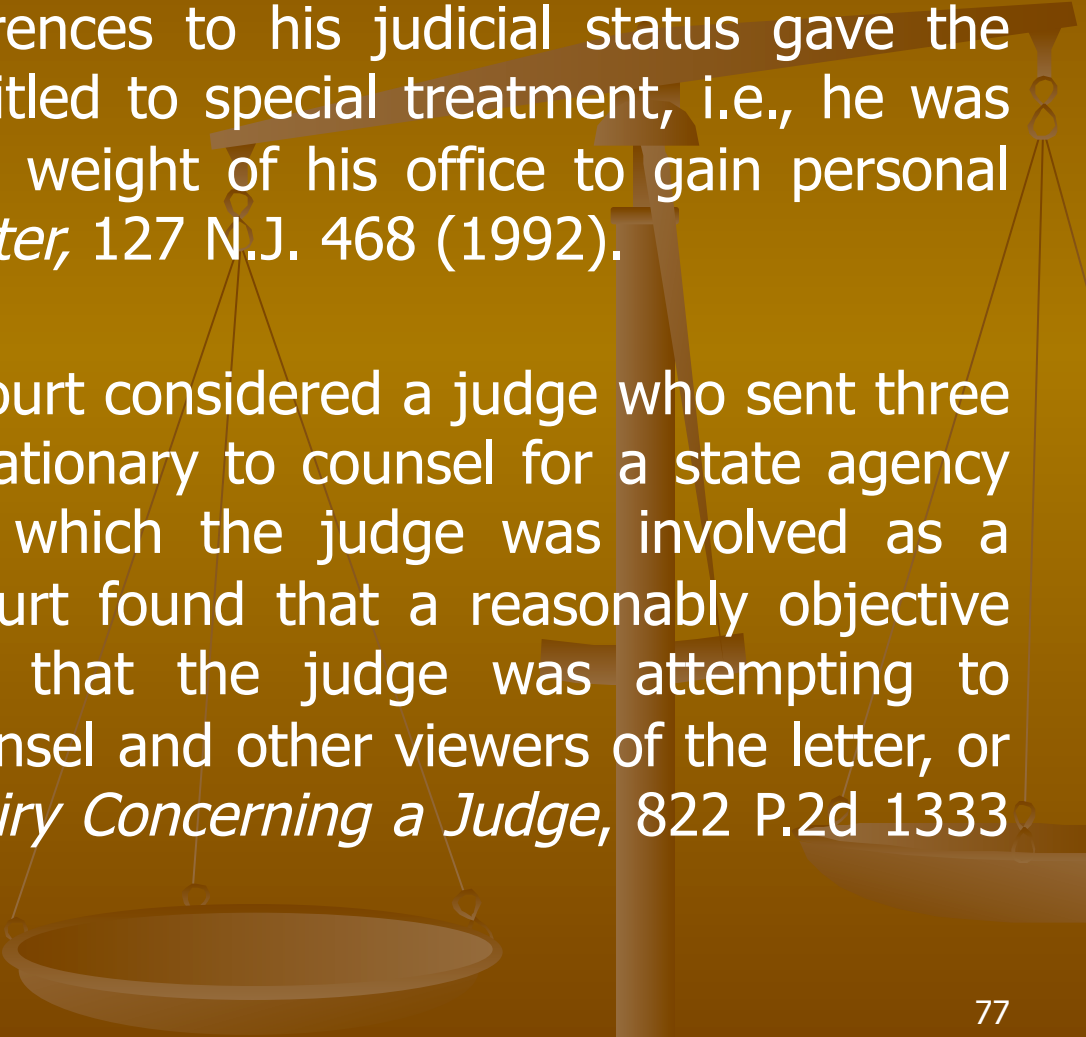


# A Wink and a Nod

- The application of this appearance standard reflects the reasonable person's understanding that much of human communication is unspoken, between the lines, with a winks and nods, and depends on what goes without saying.
  - Gratuitous references to judicial office.
  - Use of judicial letterhead (appearance of misuse of office).

Please note: It is immaterial whether the judge's conduct actually resulted in inappropriate influence. *See In re Chaisson*, 549 So. 2d 259 (La. 1989)



- 
- The New Jersey Supreme Court considered a judge who, stopped on suspicion of driving while intoxicated, told the trooper he was a judge when asked for his credentials. Court found continuous references to his judicial status gave the impression he was entitled to special treatment, i.e., he was using the prestige and weight of his office to gain personal advantage. *In re Collester*, 127 N.J. 468 (1992).
  - The Alaska Supreme Court considered a judge who sent three letters on chambers stationery to counsel for a state agency regarding litigation in which the judge was involved as a private citizen. The court found that a reasonably objective person would believe that the judge was attempting to influence opposing counsel and other viewers of the letter, or it had that effect. *Inquiry Concerning a Judge*, 822 P.2d 1333 (Alaska 1991).

# Quid Pro Quo is a No Go

You cannot exhibit favoritism in the appointments that you make. Advisory Opinion 18-940

They must be done impartially and on the basis of merit.

Even an appearance of favoritism is to be condemned as much as the impropriety itself. Advisory Opinion 18-940

- A judge in Minnesota was censured and suspended for negotiating and obtaining a substantial fee reduction from his personal attorney while contemporaneously appointing her to provide mediation or related services in matters pending before him, at the litigants' expense, without informing them that the attorney represented him in his divorce.

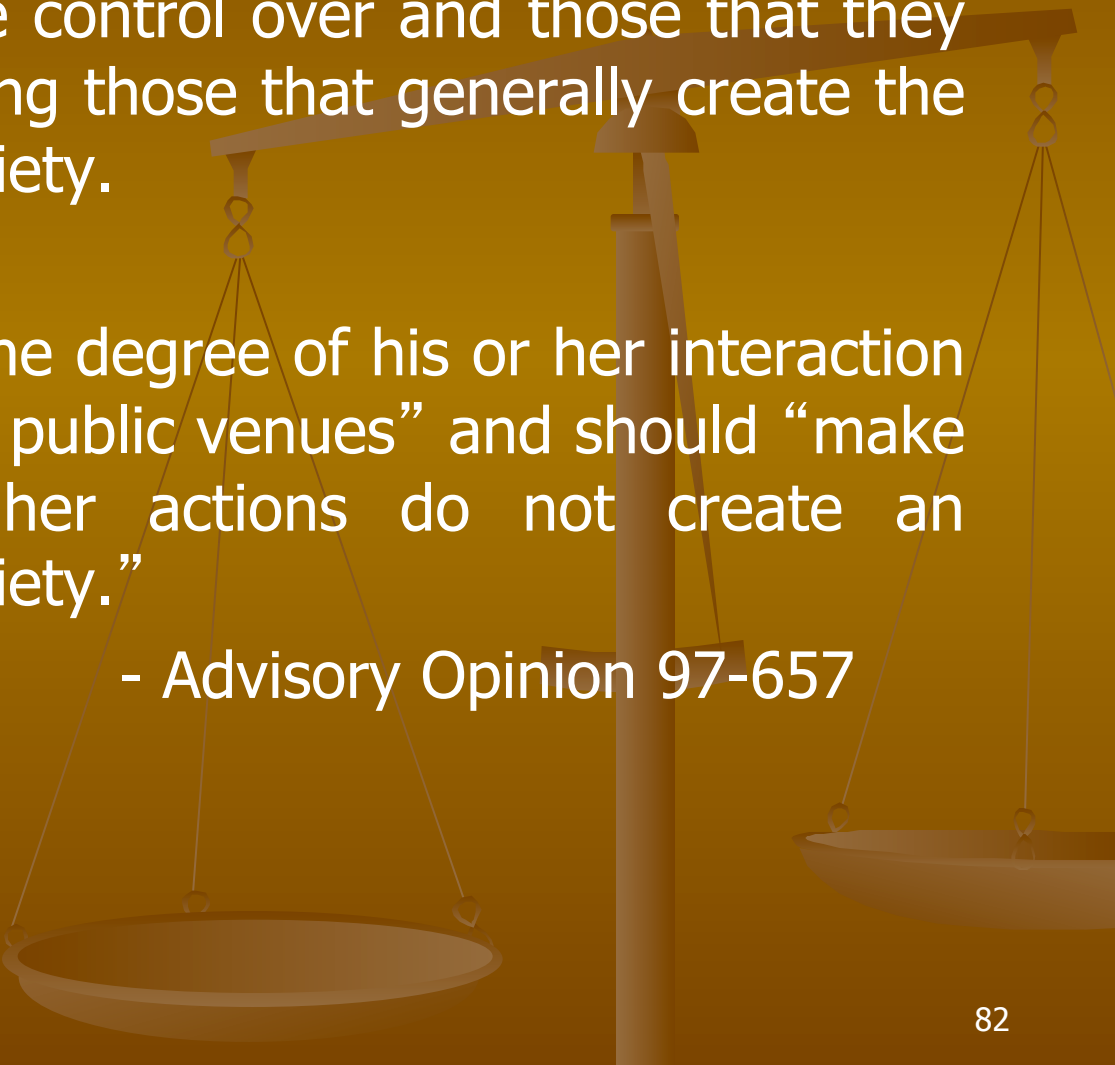
*--Inquiry into Blakely, 772 N.W. 2d 516 (Minn. 2009)*

- In a famous New York case, a judge made appointments of certain lawyers as GALs, receivers, and referees at a time when he knew that the lawyers' fathers were judges who were simultaneously making appointments of the judge's own son for similar positions. The judges obviously could not have appointed their own sons nor did the judges have an express agreement to do these cross-appointments. There was no evidence that the cross-appointments were in fact made to circumvent the nepotism rules. The judge was disciplined for creating the appearance of "disguised nepotism."

-- *In re Spector*, 47 N.Y.2d 462 (1979)

# Relationships: No Harm, No Foul (a/k/a Cronyism)

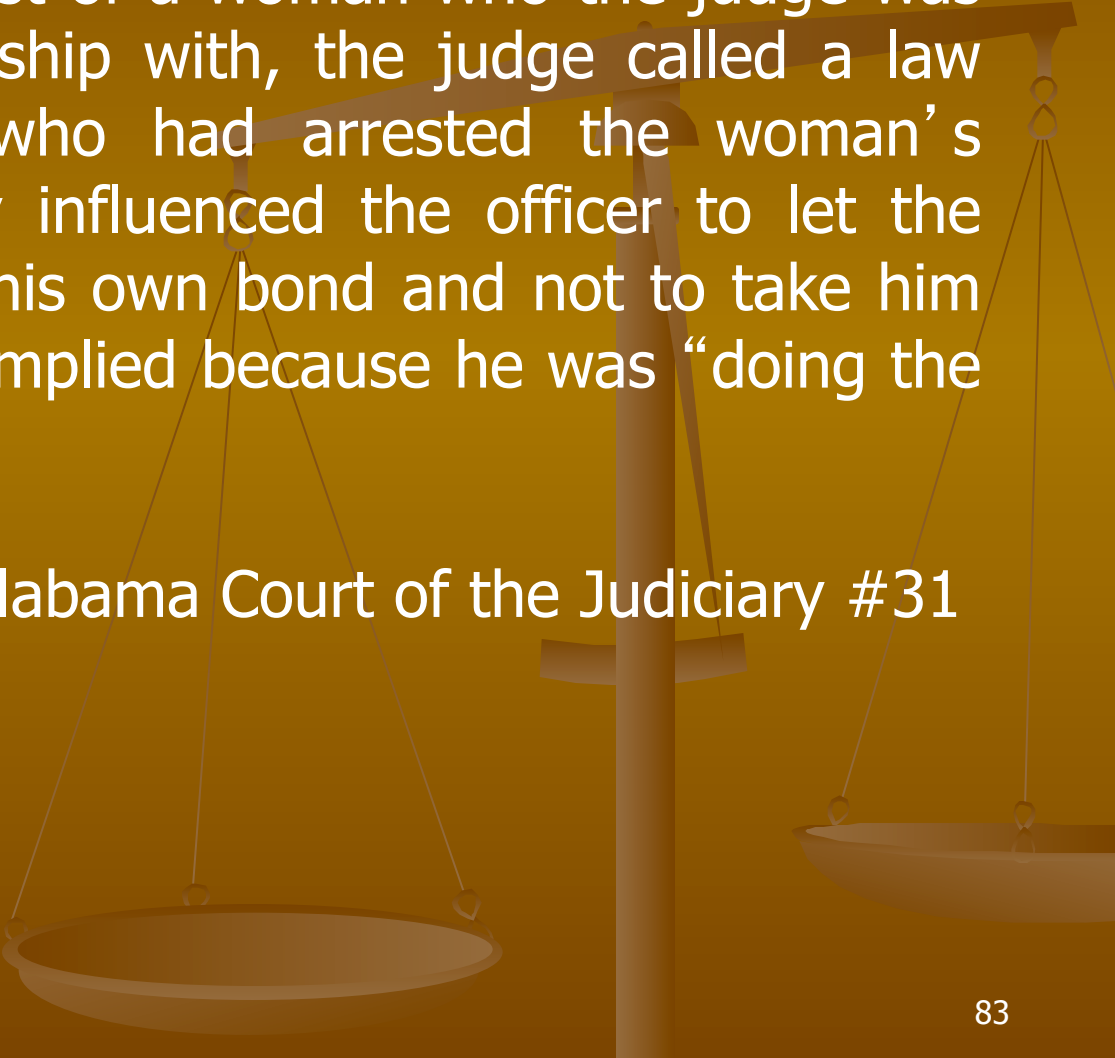
The absence of proof that a judge actually favored an attorney or party does not preclude a finding of misconduct if a reasonable person would assume the judge would favor the attorney or party, however unconsciously, because of a close, personal relationship.



In Alabama, JIC drew a distinction between relationships that judges have some control over and those that they do not, the former being those that generally create the appearance of impropriety.

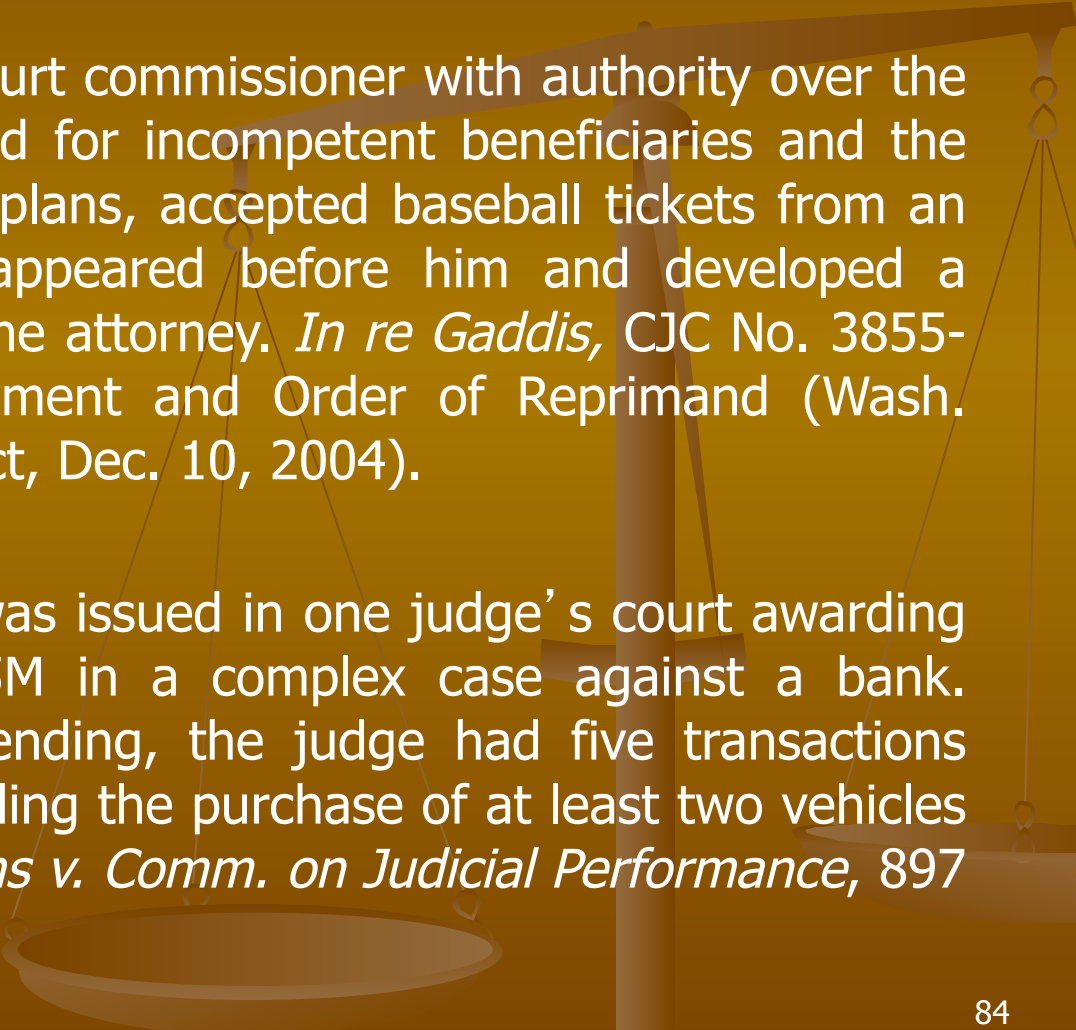
A judge can “control the degree of his or her interaction with the friend in such public venues” and should “make certain that his or her actions do not create an appearance of impropriety.”

- Advisory Opinion 97-657



Pursuant to the request of a woman who the judge was in a personal relationship with, the judge called a law enforcement officer who had arrested the woman's friend and improperly influenced the officer to let the woman's friend sign his own bond and not to take him to jail. The officer complied because he was "doing the judge a favor."

-- Alabama Court of the Judiciary #31

- 
- In Iowa, once the public learned of a judge's sexual relationship with the state's attorney who appeared before him daily, the appearance of bias was very real. *In re Gerard*, 631 N.W.2d 271 (Iowa 2001).
  - In Washington state, a court commissioner with authority over the funds of trusts maintained for incompetent beneficiaries and the approval of guardianship plans, accepted baseball tickets from an attorney who regularly appeared before him and developed a social relationship with the attorney. *In re Gaddis*, CJC No. 3855-F-114, Stipulation, Agreement and Order of Reprimand (Wash. Comm. on Judicial Conduct, Dec. 10, 2004).
  - In California, a decision was issued in one judge's court awarding an automobile dealer \$5M in a complex case against a bank. While the appeal was pending, the judge had five transactions with the dealership, including the purchase of at least two vehicles at favorable prices. *Adams v. Comm. on Judicial Performance*, 897 P.2d 548 (Cal. 1995).



# Unequal Treatment = Lending Judicial Prestige

- In Illinois, a judge created an appearance issue when he conducted an emergency bond hearing, when not on call to do so, for brother of a political supporter and friend. *In re Chmiel*, Order (Ill. Courts Comm., November 19, 2010)
- In Michigan, a judge created the appearance of impropriety by releasing a county commissioner on his own recognizance on a day he was not scheduled to do arraignments and following a series of calls from another county commissioner. *In re Logan*, 783 N.W. 2d 705 (Mich. 2010).

# Associating With Criminals

- In 1978, Alabama circuit judge censured after voluntary retirement pursuant to prosecution for associating publically and socially with a convicted felon who had reputation as being a gambler or being involved in illegal gambling operations, being involved in the traffic or sale of illegal narcotics, and being involved in illegal prostitution activity. He socialized with the felon at several public restaurants and lounges and they vacationed together on several occasions. Ala. COJ # 8
- In Louisiana, a judge's extra-marital affair with a felon on parole – created the appearance of impropriety - the public's perception of such a relationship “causes disrespect for the judiciary and falls below the standard the public has a right to expect.” *In re Hughes*, 874 So. 2d 746 (La. 2004)

- In New Jersey, a judge attended a picnic two days before his host, a friend for 18 years, was going to begin a 2.5-year prison term for racketeering. The picnic was widely publicized and attended.

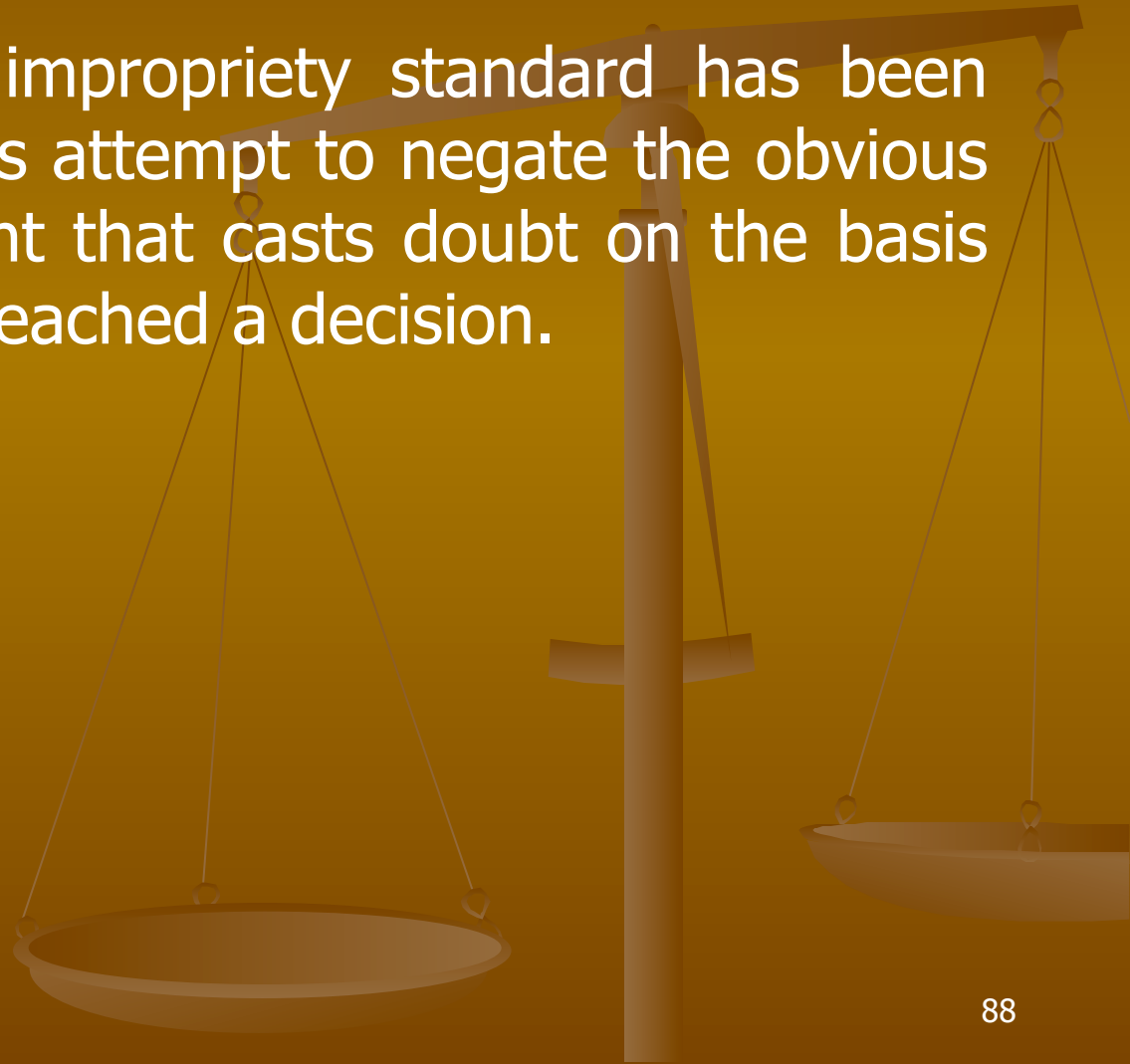
-- *Matter of Blackman*, 124 N.J. 547 (1991)

- In Arkansas, a judge failed to avoid appearance of impropriety when he sent money to a convicted robber who the judge sentenced, allowed a defendant appearing before him to live in his house for one week, gave rides to at least eight defendants in his personal car, and had lunch with other defendants.

-- *Arkansas Judicial Discipline & Disability Comm'n v. Proctor*, 360 S.W.3d 61 (2010)

# Statements: Just Kidding

The appearance of impropriety standard has been used to foil a judge's attempt to negate the obvious import of a statement that casts doubt on the basis on which the judge reached a decision.



- A judge in a courtroom in Louisiana took a straw poll of his courtroom audience regarding the guilt of a defendant on a battery charge – asking “[i]f you think I ought to find him not guilty, will you stand up?”

The judge argued that his conduct was not sanctionable because, in fact, his verdict was not based on the audience vote but the evidence presented at trial.

The Louisiana Supreme Court thought otherwise, stating that whether he actually based his verdict on their vote did not determine if his conduct was sanctionable. The mere fact that he asked the courtroom audience to vote gave the impression his verdict was based on something other than the evidence presented at trial. The court found that this type of behavior “destroys the credibility of the judiciary and undermines public confidence in the judicial process.”

--*In re Best*, 719 So. 2d 432 (La. 1998)

# Manifestations of Bias



At close of pre-trial immunity hearing of police officer for murder committed during officer's execution of a *Terry* stop, judge proclaimed he did not find the officer's testimony credible. That statement, in open court and in the presence of the media during an emotional and hotly contested proceeding, "touches upon a reasonable appearance of bias or impropriety," disqualifying the judge.

-- *Ex parte Smith* (Ala. Jan. 11, 2019)

- Judge kept list of attorneys who contributed to his campaign opponent and explained, in a newspaper article about the list, his reason for keeping such list:

“I’m not going to go out of my way to give them any special services or do them any favors.”

He denied the motions to recuse presenting those facts. The Court of the Judiciary suspended him for 6 months without pay.

Alabama Court of the Judiciary #19

- In New Hampshire, a judge made remarks about female attorneys that may have been reasonably perceived as prejudiced or biased.

*--In re Lewis*, JC-13-042-C (N.H. Jud. Conduct Comm. 2014)

- In Louisiana, a white judge's appearance in black face at a Halloween party in public at a restaurant created an appearance of bias.

*--In re Ellender*, 889 So. 2d 225 (La. 2004)



## Fraught with Danger & Appearance of Impropriety

A private conversation with a witness in the hallway after the witness's testimony or non-party (where interests that might be affected by such conduct are not presented) is an appearance of impropriety even if merely a friendly chat.

-- *Stewart v. Stewart*, 354 So. 2d 816 (Ala. Civ. App. 1977)

- In California, a judge was censured for the appearance of showing favoritism to 2 private attorneys, including appointing them as counsel for indigent defendants and visiting with them in chambers while they had cases pending before him. The judge testified that the attorneys sometimes came into his chambers for social visits on days when they were appearing before him in court, but he denied that they ever discussed cases in which he was acting as a judge.

The Court concluded that there was no evidence of *ex parte* conversations with the attorneys but the fact he met privately with these attorneys in chambers on days when the attorneys were appearing before him as counsel in a case on his calendar gave the appearance of impropriety even though the conversations were not about those cases.

--*Kennick v. Commission on Judicial Performance*, 787 P.2d 591 (Cal. 1990)

# But...

- The rules for *ex parte* contacts also apply to your conduct on social and professional networking websites.
- Avoid direct messaging through social media sites that could be considered *ex parte* communications.
- Be aware that some social and professional networking websites (e.g. LinkedIn) send a notice to the owner of the platform's page stating who has recently viewed the owner's page.

# SOCIAL MEDIA

- Just because it is social media, the Canons of Judicial Ethics still apply to all that you do and all that you post.
- We must be careful to balance the need for a judge to be immersed in the community and not mandate judicial isolation.
- All judges using social networks must, “as a baseline, employ an appropriate level of prudence, discretion and decorum in how they make use of this technology.” New York Advisory Opinion 2008-176

# Can You Be Facebook Friends With Lawyers and/or Parties?

- Alabama: Has not addressed Facebook issues
- Florida: Yes
- Ohio: Yes
- California: Yes but not with attorneys/parties who have matters pending before the court
- Massachusetts: No
- Oklahoma: No

# Appearance Concerns re Facebook

- The more personal the nature of the page, the greater likelihood of an appearance that an attorney is in a position to influence the judge.
- The greater the number of “friends,” the less likely there is to be an appearance of impropriety.
- Avoid sending friend requests to anyone involved in a pending matter.

# Other Concerns About Social Media and the Internet

- A judge should not use a party's, lawyer's, or juror's page on a social or professional networking site to obtain information regarding the matter before the judge.
- A judge should not post anything that could be construed as using the prestige of office to advance his or her private interests or the interests of others.



# FROM PRACTICE TO THE BENCH

## Rental of Law Office

- Can a judge rent his/her former law office to a lawyer who will practice in his court?

No, it would adversely reflect upon the judge's impartiality, and if he/she disqualified himself in each of his/her tenant's cases, this would tend to interfere with the judge's judicial duties.

-- Advisory Opinion 81-115



# FROM PRACTICE TO THE BENCH

## Disqualification: Appearance of Former Law Partner

- Is a judge disqualified from presiding over a case in which a party is represented by the judge's former law partner?

No, if the partner did not represent the party in the matter in controversy during the period of the partnership, and the judge does not have personal bias or prejudice.

-- Advisory Opinion 95-548

Informal advice: the judge should not preside over a case involving a party represented by his former law partner for a period of 1 year after taking the bench.

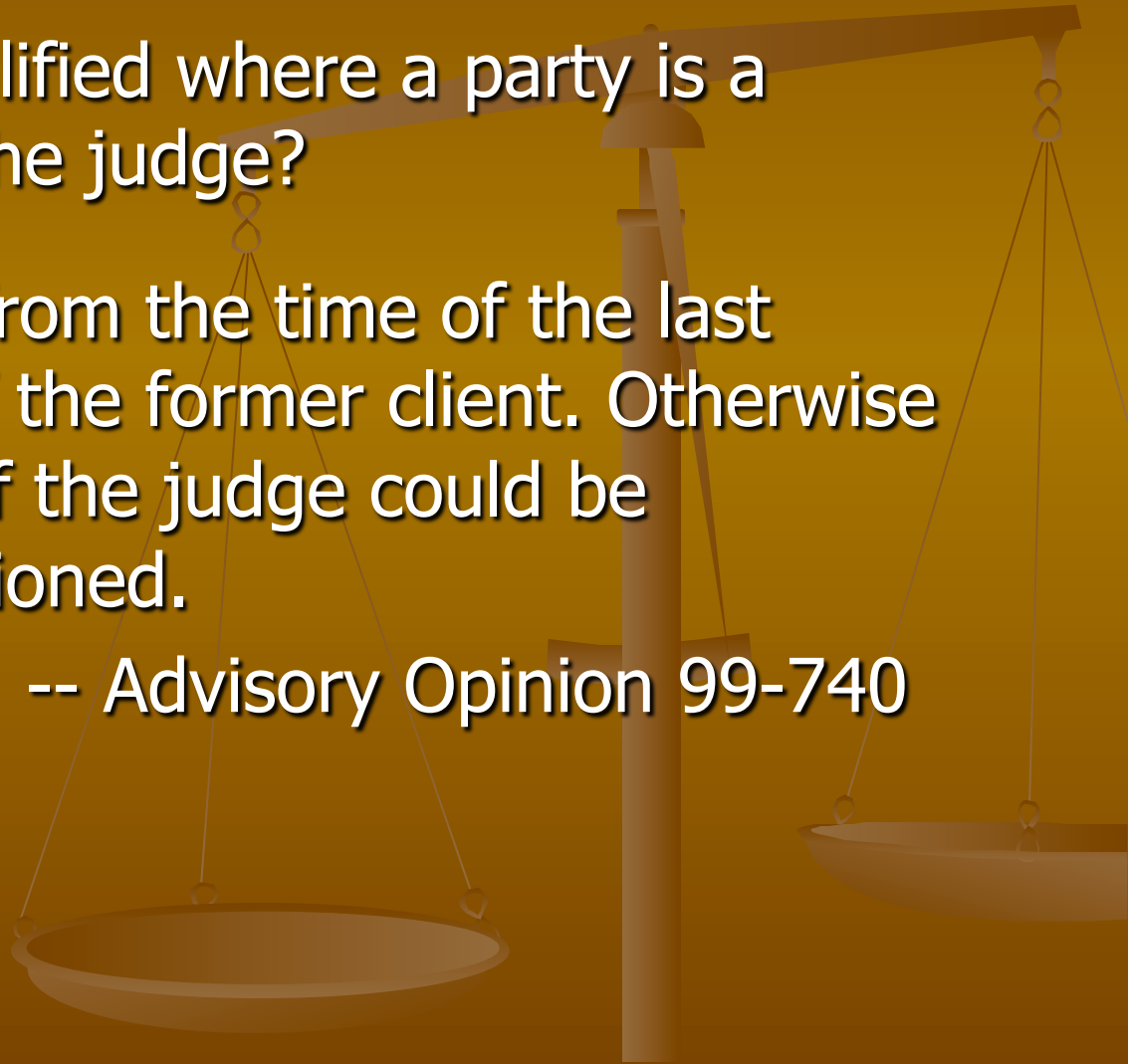
# FROM PRACTICE TO THE BENCH

## Disqualification: Party is Former Client

- Is a judge disqualified where a party is a former client of the judge?

Yes, for 2 years from the time of the last representation of the former client. Otherwise the impartiality of the judge could be reasonably questioned.

-- Advisory Opinion 99-740



# Contact Information

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